Supreme Court, U.S.
FILED
98 355 JUL 30 ...
OFFICE OF THE CLERK

No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

Gwendolyn Wright,

Petitioner,

v.

Paul Frederiksen,

Respondent.

On Petition For Writ Of Certiorari
On Certiorari To The Colorado Supreme Court
Court Of Appeals Case No. 96 CA 2060

PETITION FOR WRIT OF CERTIORARI

Gwendolyn Wright
(Appealing Pro se/Docket Fee $300. Paid)
3273 South Bahama Street
Aurora, CO 80013
(303) 680-7587

156 pp

The Colorado Courts' knowingly granted unearned legal and collection fees that included duplicate and over charges to the Respondent Mr. Frederiksen claimed in his Nov. 3, 1995 Verified Motion for Judgement against the Petitioner Gwen Wright. The Courts' have blamed the Petitioner for the Respondent's caption discrepancy. The fees claimed by Respondent is after his services were terminated by the Court on August 19, 1993 and after he admitted no official duties in her case since that time. Evidence in the Record (and extrinsic evidence) clearly proves his Judgement to be a fraudulent act of Judicial legal abuse and extortion **under the color of official right**. The Courts' are forcing Petitioner, under duress to pay the Respondent (Mr. Frederiksen) for no services rendered. **See Appendix G, I, J.** Discrimination, fraud and extortion against litigants by appointed Judicial officials to obtain financial benefits for themselves and others thru **legal enforcement under the color of official right** is still unjustifiable, unlawful and a threat to all citizens Constitutional rights. **Blacks Law Dictionary, 6th ed - Definition: Extortion**–The obtaining of property from another induced by wrongful use of actual or threatened force, violence, or fear; or under color of official right. 18 U.S.C.A 871 et seq,; 1951.

QUESTIONS PRESENTED

(1). Whether the Colo. Supreme Court erred and significantly deprived the Petitioner of her Civil Rights, Due Process of Law, equal protection of the

law and fair trial---when it denied Petition for Writ of Certiorari to grant review of the Court of Appeals decision indicating the merits of the Appeal were not reached and denial was based solely on the Petitioner failing to name Mr. Paul Frederiksen as Appellee in the caption; when the Court accepted his Judgement and it was he who failed to name or identify himself in the caption as Appellee and filed his Judgement under the caption; **Re the Marriage of: John J. Wright, Petitioner and Gwendolyn Wright, Respondent, Case # 90DR2195?**

(2). Whether it is a threat to all citizens Constitutional rights and invites Judicial abuse of the legal process by some Court appointed officials when Courts' grant absolute immunity from legal suit (a Master in the instance case) when they perform acts outside the scope of their authority and cause injury; and when they use their official positions under the color of official right to orchestrate situations to purposely prolong litigation to obtain significant unlawful financial benefits for themselves and others from litigants who's cases happen to be assigned under their jurisdiction?

(3) Whether the Respondent (Mr. Frederiksen) a Court appointed official is entitled to protection when the Court is aware of evidence in the record and extrinsic evidence of his unlawful activity against the Petitioner (Gwen Wright) and her son that prolonged their litigation for years in his pursuit of significant

financial benefit for himself and others from her case --his own admission to the Court of his continuing to charge the Petitioner (Gwen Wright) unearned legal fees after his services were officially terminated by the court and he no longer had any official duties in the case--his outrageous and threatening audio taped 59 minute ex parte call to the Petitioner's home without her attorney's knowledge for which he charged her over $150.00, and numerous other violations?

(4). Whether the Colo. Courts' use of inherent power to ignore its own termination of service order for Mr. Frederiksen, and ignore years of fraudulent activity outside his scope of authority to obtain unlawful financial benefits for himself and others from her litigation, that caused significant injury to Petitioner and minor child -- is a significant deprivation of the Petitioner and her son's Due Process, equal protection and fair trial rights; and are Judicial decisions that threaten citizens rights to State and Federal Constitutional protection?

(5). Whether the Petitioner (Gwen Wright) and her son were extremely deprived of Constitutional rights to protection and effective representation when evidence in the Record (and extrinsic evidence) supports the fact that her legal counsel was blatantly disrespected and intimidated to the point of having serious concerns regarding jeopardy to her legal career because of her involvement as the Petitioner's attorney, and when she began using the laws that would protect the Petitioner and child, which challenged the wrong doers' unlawfulness?

LIST OF PARTIES

GWENDOLYN WRIGHT	PETITIONER
PAUL FREDERIKSEN	RESPONDENT

REFERENCES IN THIS BRIEF

Gwendolyn Wright shall be referred to as **"Petitioner /Gwen Wright"**.-- Mr. Paul Frederiksen, (the Respondent as shown on cover page) shall be referred to as **" Mr. Frederiksen/Master"** the official title he formally held in this case pursuant C.R.S Rule 53. – **"Minor child,"** (Deshawnta L. Wright) son of Petitioner (Gwen Wright) and John Wright. -- **"Husband,"** (John J. Wright, ex-husband to Petitioner). **"Husband's attorney,"** (Mr. Lionel Menin, personal friend to Katheryn D. Ama). –**"Katheryn D. Ama/Ms. Ama,"** (3rd party and friend to Mr. Menin, also wife to John Wright thru bigamy). **" Petitioner's, (Gwen Wright) attorney"** (Marcy Rothenberg-Romer 1991 thru May 12, 1998).

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i, ii, iii

LIST OF PARTIES..... iv

INDEX TO APPENDICES..... vi

TABLE OF AUTHORITIES CITED..... vii, viii

OPINIONS BELOW..... viii

JURISDICTION..... viii

CONSTITUTIONAL AND STATUTORY PROVISIONS..... viii

STATEMENT OF CASE..... 1

REASONS FOR GRANTING THE WRIT..... 28

CONCLUSIONS..... 30

INDEX OF APPENDICES

APPENDIX A - Decision of Co. Ct. of App.- Appeal Dismissed, 5-7-98

APPENDIX B - Decision of Co. Supreme Ct. - Petition Denied, 5-4-98

APPENDIX C - Decision of Co. Ct. of App. - Rehearing denied, 11-13-97

APPENDIX D - Decision of Co. Ct. of App. - Appeal Dismissed, 9-25-97

APPENDIX E - Decision of Co. Ct. of App. - Order/ Show Cause, 1-13-97

APPENDIX F - Petition For Writ of Certiorari to Co. Supreme Ct., 12-11-97

APPENDIX G - Respondent-Appellant's Opening Brief, 5-27-97

APPENDIX H - Response to Master's Arguments To The Court, 7-18-96

APPENDIX I - Three Court Orders Granted -- Missing 11 To 27 Months

APPENDIX J - Letters- Attempts Reconcile Erroneous Billing, 1993 to 1996

APPENDIX K - Companion Case--Civil Suit, U.S. Supreme Ct. Docket 97-1974

APPENDIX L - Constitutional and Statutory Provisions -Text

TABLE OF AUTHORITIES CITED

STATUES **Page**

Blacks Law Dictionary (6th ed) ..... i, 9

Civil Rights Act of 1964 701 et seq, 42 U.S.C. A, F.R.C.P. Rule 53 5

Colorado Constitution..... 17

C.R.C.P Rule 11 8

C.R.C.P. Rule 37..... 3

C.R.C.P. Rule 53 1

C.R.C.P. Rule 53 (e) (2) 5

C.R.C.P. Rule 53 16

C.R.C.P. Rule 60 ..... 23, 24, 27

Colorado Rules of Professional Conduct, Rule 1.5..... 22, 25

C.R.S. 14-10-124..... 4, 28

CASES

Brown v. Brown; 161 Colo. 409, 422 P.2d 634 (1967) 9

Burts v. Burts; 227 Va. 618, 316 S.E. 2d 745 (1984) 9

Gelford v. District Court; 180 Colo. 95, 504 P.2d 673 (1972) 12

Maniatis v. Stiny; 130 Colo. 261, 274 P.2d 975 (1954) 5

Marriage of Debreceni; 663 P,2d 1062 (Colo. App. 1983) 16

TABLES OF AUTHORITIES CITED

CASES continued **Page**

Marriage of Park; 27 Cal. 3d 337, 165 Cal. Rptr. 792, 612, P.2d 882 (1980)... 25

See the discussion of extrinsic fraud, infra, at note 58.

Mtn. St. Tel. & Tel. Co. v. Dept. of Labor; 84 Colo.334, 520 P.2d 586, 1974.. 18

Olin Mathieson Chem. Corp. v. Francis; 134 Colo. 160, 301 P.2d 139 (1956)..17

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Gwendolyn Wright petition for a writ of certiorari to review the judgement of the Colorado Supreme Court.

The opinions of the Colorado Court of Appeals for not reaching the merits of my case appears at Appendix A, D to the Petition.

JURISDICTION

The Colorado Supreme Court decided my case on May 4, 1998. A copy of that decision appears at Appendix B. The Court's jurisdiction is invoked pursuant to Colo. Const. Art. VI, 2(s); 13-4-108 CRS and C.A.R. 49.

CONSTITUTIONAL AND STATUTORY PROVISIONS

C.R.S 13-17-102(4) --C.R.C.P. 13-21-111.5(3) -- U.S. Constitution, Amendment XIV, Sect. --Colo. Constitution, Section 25. At Appendix L.

STATEMENT OF CASE

The Petitioner (Gwen Wright) was involved in a dissolution proceeding in 1990. The Trial Court appointed the Respondent (Paul Frederiksen) as Master on July 25, 1991, under a limited Order of Reference, pursuant **C.R.C.P. Rule 53.** The Order stipulated the Master would review issues only in regards to; "contribution, acquisition and ultimate disposition of property." The Order further stipulated that the Court would **retain all appropriate review functions,** including a trial de novo under **Rule 53...**" The Master went far beyond the scope of his authority by making recommendations and decisions on custody and visitation matters which did not conform to the Order, resulting in significant injury to the Petitioner, Gwen Wright and minor son, Deshawnta Wright.

Relevant to the issue of on going fraud and extortion in this case: The husband's (John Wright) attorney Mr. Lionel Menin presented a subpoenaed INS Document to the Court on July 25, 1991, that represented a significant marital asset of cash value belonging to the parties, John and Gwen Wright and a prospective inheritance of their minor son. The INS Policy Document was fraudulent and had been clearly altered, with all beneficiary information heavily scratched out. A third party's name, Katheryn D. Ama appeared on the INS Document as having taken unlawful ownership as irrevocable owner by transfer,

effective November, 1990. Her ownership was in violation of the Sept. 11, 1990 Court ordered Temporary Injunction restricting transferring or hiding marital assets, etc. It was later determined from Discovery evidence that the beneficiary information scratched out on the INS Policy Document were the names of Ms. Ama's two grown daughters shown where Deshawnta Wright's name would rightfully have appeared. This subpoenaed information was contrary to what Mr. Menin provided to Petitioner's attorney by fax only a month earlier on June 28, 1991. His fax showed Gwendolyn Wright's name still on the INS Policy as it appeared in 1977 when the parties first purchased it. This was a deliberate act of fraud on the part of the Husband's attorney to deceive Petitioner to rely on his fax information and take no action, or act in a manner to her own detriment and unknowingly promote the success of his plan to acquire financial marital benefits for Ms. Ama. The Court, without giving Gwen Wright (appearing as Respondent without counsel) an opportunity to object to fraud accepted the fraudulent INS Document and entered it in the Court's Minute Orders for July 25, 1991 without question of fraudulent violations of the Temporary Injunction.

It was later discovered Katheryn D. Ama and Mr. Menin (the Husband's attorney) were personal friends. He represented Ms. Ama's private interest by acting on her behalf as an undisclosed benefactor to unlawfully acquire benefits from Gwen Wright's and the child's rightful share of marital assets.

Mr. Frederiksen proceeded with duties as Master and was presented with extensive Discovery evidence **(C.R.S Rule 37)** at the September 20, 1991 hearing. Influenced by the Husband attorney's private interest, in Item 6e of his Report he concealed the fact that Ms. Ama was legal owner through fraudulent transfer of the INS Policy. He even listed an erroneous cash value in his Report to further conceal the initial value of the Policy before Ms. Ama began withdrawing the accrued cash since 1977. Despite Discovery evidence of fraud presented the Master knowingly allowed Ms. Ama to share in his distribution of the Wright's marital assets as an unidentified non-party to the litigation, without requiring her intervention by appeal if she had a lawful claim to assert.

Mr. Frederiksen as Master had been previously apprised of Petitioner, Gwen Wright's ***(then Wife-Respondent)*** disability and severe disciplinary problems she was having with her child. He exceeded his authority in making recommendations to benefit Ms. Ama, by influencing the court to force Petitioner to accept sole custody of the troubled child against her will, despite her disability and testimony regarding her inability to cope with the child alone. Even though conditions seriously warranted immediate intervention he purposely failed to consider three requests for a Guardian Ad Litem, (GAL) already presented to the Trial Court or even obtain expert testimony or depositions from both doctors involved with mother and child, (who's names appeared on the Trial Data

Certificate) as required by law; pursuant **C.R.S. 14-10-124** (Best Interest of Child). Subpoenaed witnesses waiting to give testimony regarding custody, marital assets and malicious interference in visitation between the child and his father were not allowed to give testimony. Ms. Ama was subpoenaed to be questioned regarding her fraudulent ownership of marital assets and malicious interference with custody/visitation matters. She ignored the subpoena.

Mr. Frederiksen as Master submitted a clearly erroneous Report ***without a transcript.*** His recommendations on custody issues were extremely damaging to the child and Petitioner causing injury. His Report was not supported by Discovery evidence and testimony presented at the hearing. The Trial Court failed to adhere to stipulations in its limited Order of Reference to retain review function of the Master's Findings. The Trial Court entered his recommended Permanent Orders on October 28, 1991 without review of any supportive evidence to protect the minor child or to allow an independent decision that his Report was not **clearly erroneous and did conform to the Order**.

District court, which approved Master's findings and recommendations and adopted them as its opinion in entering judgement for defendant in civil rights case before ***transcript*** of proceedings before Master was prepared, could not pass on whether findings of Master were **clearly erroneous** as required

without a ***transcript,*** and District Court's judgement was therefore vacated and case remanded for determination of sufficiency of Master's findings in the first instance by the District Court. **Civil Rights Act of 1964 701 et seq, 42 U.S.C.A. 2000e et seq; Fed. Rules Civ. Proc.; Rule 53 (e)(2), 28 U. S. C. A.**

On November 1, 1991, prior to learning that Permanent Orders had been entered by the Trial Court, the Petitioner's attorney filed an Objection to the Master's Report pursuant **C.R.C.P. Rule 53 (e) (2),** and requested a trial de novo. The Trial Court held a Feb. 27, 1992 hearing on Objections but reinstated the Master's Report as it's Permanent Orders without evidentiary support.

Where trial court appointed a Master who conducted trial and filed his report but did not file a transcript of evidence and objections could not have been properly passed upon without knowledge of evidence trial court improperly overruled objections and entered a judgement in conformity with Master's Report without reviewing evidence heard by the Master. **Maniatis v. Stiny, 130 Colo, 261, 274 P.2d 975 (1954.**

On November 2, 1991 the Petitioner's husband (John J. Wright) and Katheryn D. Ama committed bigamy; clearly premeditated. Upon learning of this crime Petitioner informed her attorney, who contacted the Court and was advised the Judge had definitely not entered a divorce decree for John and Gwen

Wright. The Petitioner Gwen Wright filed charges of bigamy against her husband John Wright and Katheryn D. Ama with the Douglas County (Colo.), Sheriff's Department on Nov. 8, 1991. On Nov. 13, 1991 an Officer called and informed the Petitioner that her bigamy charges could not be investigated because he had talked with her husband's attorney Mr. Menin, and was advised that he **had the evidence to support the fact that her husband was divorced from her.** In light of the Court not having entered a divorce decree she inquired about the nature of the evidence since it would also divorce her. The Officer said he didn't know. The evidence turned out to be a bogus divorce decree prepared by the Husband's attorney Mr. Menin, on November 13, 1991 to cover his lies to the Sheriff's Department to prevent an investigation, and to protect his friend Ms. Ama. The Husband's attorney placed a copy of his illegal divorce decree in the Court records. He mailed a copy to Gwen Wright's attorney with a cover letter dated November 13, 1991 instructing her to sign his bogus decree and forward same to the Master (Mr. Frederiksen) at his request. The letter clearly implicates Mr. Frederiksen in conspiracy and collusion with Mr. Menin to unlawfully cover-up bigamy to prevent and investigation that could present serious problems for them both. Mr. Frederiksen as Master, in his ex parte call to Petitioner Gwen Wright's home on March 23, 1993, admitted to her his knowledge of the bigamy and indicated approval. Upon learning of this illegal

decree through a private detective she had hired, Petitioner confronted her attorney who assured her the reason she did not sign as requested was because she knew the divorce decree had not been issued by the court. Four months after the bigamy, (Feb. 27, 1992) the Court, to protect the Master and the Husband's attorney from consequences of unlawful involvement in the bigamy coverup and lies to the police, improperly executed a nunc pro tunc decree and entered it backdated to Sept. 20, 1991 to intentionally legitimize premeditated bigamy that had occurred on November 2, 1991.

Mr. Menin having successfully succeeded in having the Court legitimize the bigamy of his friend and client, two months later proceeded again to use his influence with the Court in an outrageous birth date scam with the child's father. On April 8, 1992 he filed a fraudulent, **"Motion To Correct Date Of Birth And Age Of Adopted Child;"** stating, **"As grounds therefore: Mr. Wright has found adoption papers of the child showing his actual date of birth and age. Wherefore the Petitioner requests that the original petition and subsequent orders be amended in conformance with this fact..."** His Motion alleged that, **"the correct birth date on the adoption papers is shown to be March 19, 1972."** This fraudulent scam through the Court would have allowed the child born March 19, 1976 to become and instant adult (from sixteen to age

twenty), for Court record purposes to automatically and unlawfully emancipate the child's father from his parental responsibility of child support. All involved knew the Court had forced the Petitioner Gwen Wright to assume sole custody of the minor child and that she had all certified records for her son. The birth date scam, with no objections from the Ccurt became an expensive legal battle for the Petitioner to fight. The birth date scam would have succeeded had her attorney not requested the supporting evidence from Mr. Menin to justify his Motion, which of course he couldn't produce. He never submitted the information because this was attempted fraud and his alleged adoption papers did not exist. The Petitioner's attorney filed **C.R.S. Rule 11** for compensation of extra legal fees to Petitioner for the filing of a frivolous Motion. The Motion was denied.

Mr. Frederiksen remained on the case following the February 27, 1992 Permanent Orders over the Petitioner Gwen Wrights's objections. In violation of her Due Process rights Gwen Wright was purposely excluded **(by the Court and Master)** from attending several subsequent divorce and custody hearings where damaging and erroneous information to prolong the case was purposely presented to the Court to use as a basis for its decisions regarding unresolved custody and visitation issues for the minor child, and property settlement.

Petitioner Gwen Wright was forced to purchase Court transcripts in

order to be fully informed of what really took place in the forced exclusion from her hearings. In response to the Petitioner's numerous complaints regarding being excluded from her hearings her attorney advised that: ***"The Court had not put anything in writing but fashioned the hearings so she would not have an opportunity to attend."***

The Petitioner had serious concerns regarding the October 29, 1992 hearing rescheduled from October 8th where the Court appointed **"absentee"** GAL who had never met or communicated in any way with the Petitioner or his client the minor child, would make recommendations for the child whom he chose not to have any contact. Gwen Wright called the Court and made a personal request for permission to attend this particular hearing hoping the Court would make an exception this time. Petitioner was verbally denied her request to attend the October 29, 1992 hearing involving critical custody/visitation issues.

The word "hearing" contemplates not only the privilege to be present when the matter is being considered, but also the right to present one's contention and support the same by proof and argument. **Brown v. Brown, 161 Colo. 409 P.2d 634 (1967). Black's Law Dictionary (3d ed). C.R.C.P Rule 53, V.** In order to meet the requirements of a fair trial **the parties must not be excluded from the hearing... Burts v. Burts, 227 Va. 618, 316 S. E. 2d 745 (1984).**

Mr. Frederiksen as Master continued to misuse his official position in a manner which further injured the Petitioner Gwen Wright and the minor child. On March 23, 1993 the Master made an extremely outrageous and threatening ex parte call to the Petitioner's home without the knowledge of her attorney. His dialog included a threat. He indicated to her that she was going to be in trouble if she made public the kind of things she was saying about him, (which was also contained in the Self Defense Complaint Gwen Wright had submitted to the presiding Judge in writing earlier that year). In his ex parte dialog to Gwen Wright he acknowledged and gave official approval of unlawful acts perpetrated against her and the minor child, (i.e. bigamy, fraud, extravagant spending in violation of the Court ordered Temporary Injunction, etc.). He criticized her attorney, told deliberate lies and made irresponsible remarks regarding the minor child's Court ordered visitation failure, **"... as Petitioner's fault and not being his problem..."** To Petitioner's query regarding her husbands bigamy the Master responded; **"... Yeah, I know he committed bigamy, but how does that hurt you...?"** He went on to make very improper personal statements regarding the Petitioner's husband's rationale for extravagant spending for gifts and travel as what all **"silly old men do when they're in love. They all spend like that."** He continued; **"He never saved anything he wasn't forced to save.**

He never saved a dollar, Ha, Ha, Ha..." Aside from the falsity of his remark is the fact he never knew Gwen Wright's husband; so his dialog was his personal assessment and inditement of a specific group of men in general. Mr. Frederiksen as Master in his division of marital assets gave consideration for the Husband's gender and purposely failed to consider his extravagant spending exposed through Discovery; (i.e. mink coat, diamond ring, huge cash gifts, travel, etc.) as a part of his share of marital assets already taken. Instead he replaced the funds and awarded Husband an extra $20,750.00 from the remaining marital assets despite his knowledge of no child support contributions. In his ex parte dialog he told Petitioner he knew the Husband " **spent thousands of dollars and went on trips.**" In response to the Petitioner's complaint regarding Katheryn D. Ama and her relatives benefiting from her life's work in place of her own family the Master replied, **"It's too sad she got away with that."** His statements were malicious and far, far beyond his scope of authority. Mr. Frederiksen's conduct was so shocking and made worst by the fact that it was he who allowed Ms. Ama to get away with fraud and bigamy against her and her son. His conduct caused the Petitioner to suffer severe emotional stress and chronic physical health problems. He also indicated to the Petitioner during his ex parte dialog, ***that it was he and not the Judge who made the decisions in her case.***

Delegation of decision making is abdication of constitutional responsibilities. Where the Trial Court's order appointing the Master in effect delegates the decision making as well as the fact finding function to the Master, the Judge abdicates his constitutional responsibilities and duties. **Gelfond v. District Court, 180 Colo. 95, 504 P.2d 673 (1972).**

In light of the Mr. Frederiksen's past on going acts of discrimination and willful intent to injure her and her son the Petitioner feared his motive for contacting her at home instead of her attorney. The Petitioner audio taped (and transcribed) his 59 minute ex parte call, having no other means of protection available to her. The contents of Mr. Frederiksen's ex parte call goes far beyond the scope of his Judicial authority, to be justifiably classified as extreme violation of professional ethics and the Petitioner's Civil Rights, Due Process of Law and equal protection rights. In essence, his ex parte call equates to a forced and contrived hearing where he used the power of his official position to purposely harass, with full knowledge of her proven disability. He was well aware that his direct contact and dialog would increase her emotional suffering. He knew his direct contact denied the Petitioner her Constitutional rights to the benefit of representation by her legal counsel on specific issues discussed. He also knew that the Petitioner Gwen Wright could not defend herself and her son effectively against his official power, legal expertise and lack of professional ethics. He

viewed Gwen Wright's obvious stress and struggles to defend herself and her son with perverse humor. His laughter is heard on the audio tape of his ex parte call to her home and is contained as evidence in the Court record.

To carry his animosity toward the Petitioner to even further extremes, Mr. Frederiksen as Master performed another extremely malicious act that clearly demonstrates his intense disrespect for the Petitioner's rights and the limits he will go to injure her. Petitioner's attorney advised of a call she had received from Mr. Frederiksen. He purposely failed to inform her he had contacted her client the Petitioner direct; ***instead he lied to her attorney stating; "that the Petitioner had been initiating unsolicited ex parte phone contacts with him." He said she told him, " she was going to sue her attorney..."*** This act of predetermined malice was emotionally devastating to the Petitioner. That Mr. Frederiksen's conduct representing the Colo. Judicial System, with the imbalance of power weighted totally in his favor against her and the child, would go to such unreasonable extremes to destroy client/attorney rapport, can be justifiably viewed as intense irrational behavior. His perversive act would have been successful had the Petitioner not audio taped his outrageous ex parte call to her home on March 23, 1993. Without the audio tape no one would have believed her truth. She gave a copy of the audio tape and transcript to her attorney to

prove the Master was deliberately lying. That it was he who initiated unsolicited ex parte calls to her, causing increased emotional stress and injury.

The Petitioner's attorney had voiced concerns regarding detriment to her own legal career because of her involvement as her legal counsel in this case. Because Petitioner had been given reason for justifiable concern regarding possible retaliation against her for lawfully challenging appointed officials' and legal professionals' unlawful acts and Civil Rights violations against her and her son, her attorney allowed the inclusion of a Plea for Protection Motion to be included as Exhibit G in her July 3, 1996 Argument to the Trial Court.

The Petitioner brought a Civil Suit against Mr. Frederiksen based on injuries caused by his tortious conduct as Master and his ex parte dialog. The Colo. Court of Appeals drafted a new in house law (not for publication) that gives Mr. Frederiksen protection against legal suit for any and all acts of malicious injury to Petitioner under **"absolute immunity"** This Civil Suit is presently filed with the U.S. Supreme Court under Docket # 97-1974. **See Exhibit K.** In light of Mr. Frederiksen's past unconscionable malice, Petitioner has grave concerns regarding his recent absolute immunity status which gives him legal protection for any harmful act he may choose to inflict (or order) against her. Gwen Wright is a retired senior citizen who have suffered

unlawful legal abuse for 71/2 years and is punished because she challenged the wrongdoers in her efforts to obtain equal protection for herself and her son.

Settlement of property issues were determined by the Trial Court at a May 20, 1993 closing for the sale of the parties Parker, CO home. The Petitioner's legal participation in the ultimate closing sale for her home had been unlawfully revoked a year earlier in June 1992. Husband's attorney Mr. Menin, unlawfully impersonated Mr. Frederiksen for the purpose of issuing a court order (as the Master) to revoke Gwen Wright's power of signature, and to appoint the Court Clerk to sign in her place to prevent the necessity of her future involvement in the sale of her home. Mr. Frederiksen as Master, had previously excluded her from participating in fixing a listing price for the sale of her home, in violation of a Court order and her Due Process rights.

Mr. Frederiksen as Master, in complicity with Mr. Menin used his official position and influence with the Court to execute legitimization of Mr. Menin's order, to intentionally create a predetermined outcome that would have significant financial benefit for both. The Petitioner's attorney, realizing the order revoking her client's power of signature was clearly prepared by the Husband's attorney and not the Master, or the Court filed Objections with the Court on the Petitioner's behalf. Nonetheless, Mr. Menin's order was legitimized in June 1992 by the signatures of both the Master and the Judge

without the Petitioner's attorney's knowledge, or even being a party to this ex parte transaction where the Petitioner was denied legal representation. ***This ex parte court order conveniently disappeared for 29 months.*** This order was not discovered until Nov. 1994. Another order had been prepared in it's place omitting the Master's signature, but still containing Mr. Menin's stipulations verbatim, revoking the Petitioner Gwen Wright's power of signature.

Report of referee is not order, but is recommendation; **referee has no power to enter orders or decrees. In re Marriage of Debreceni, 663 P.2d 1062 (Colo. App. 1983). Rule 53.**

Prior to the closing on the Petitioner's Parker CO home her attorney filed an April 23, 1993 **"Motion to Disqualify Master/Receiver, Void Contract, Stay of Execution and Payment Into Escrow."** This Motion was based on the Respondent's, (Mr. Frederiksen as Master), violation of the August 24, 1992 Court order to consult both parties, in regards to fixing the listing price for the sale of their home. He had denied the Petitioner this Due Process right. The Motion addressed his failure to allow the Petitioner to even be aware of the actual sales contract that was ultimately used at the closing on her home. It also apprised the Court of Mr. Frederiksen's outrageous and inappropriate ex parte call to the Petitioner's home on March 23, 1993. The Motion was denied.

The right of an owner of property to fix the price at which he will sell it is an inherent attribute of the property itself and is within the protection of the state and federal constitutions. **Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956). Also, Colorado Constitution, Section 25, Due Process of Law.**

Neither the Petitioner Gwen Wright or her attorney were notified of the Master's rescheduled May 20, 1993 closing date and time for the sale of her home. At the closing, in the contrived absence of the Petitioner and her attorney, all funds from the sale of the parties home were distributed with the exception of $31,000.00 of Gwen Wright's share, that the Court on Mr. Frederiksen's advise improperly withheld on the pretext of forcing her to purchase a supersedeas bond to stay a *non-existent* court order to prevent distribution of funds which he had already completely distributed at the closing. Mr. Frederiksen ordered the Petitioner's $31,000.00 be held in escrow in his name, to ultimately be awarded to the husband's attorney to cover the cost and damages for time he had spent responding to the appeal of **Rule 60** the Petitioner had filed in 1992 on the Trial Court's denial for investigation of fraud in her divorce. The Petitioner withdrew her appeal of **Rule 60** under duress in an attempt to have her $31,000.00 released by the Court. The Husband's attorney (Mr. Menin) could only substantiate

$3,400.00 worth of time spent in responding to the appeal. However, he had previously filed a Motion to influence the Court to order the Petitioner (who is not rich) to post a bond for his ultimate advantage in the outrageous amount of $492,000.00 to cover his $3,400.00. The court instead, ordered the excessive amount of $31,000.00 withheld from the Petitioner's share from the sale of her home to ultimately be awarded to him. Mr. Frederiksen after contriving to exclude the Petitioner and her attorney from the closing, would not release the closing documents to her that is required for tax purposes. He also failed to provide an itemized billing statement for the $3,900.00 which he had taken at the closing from the sale for payment of his legal fees by the parties. The Petitioner was forced to contact her attorney, incurring unnecessary legal fees to obtain documents that were due to her without cost

The necessity for notice and hearing in matters involving property. The essence of procedural Due Process is fundamental fairness. This embodies adequate advance notice and an opportunity to be heard prior to state action resulting in deprivation of a significant property interest. It likewise entitles a litigant to timely notice of decisions which have adjudicated his property interests in relation to available appellate remedies. **Mountain States Tel. & Tel Co. V. Department of Labor. Also, Colorado Constitution, Section 25.**

The Trial Court made an honorable decision to correct its indiscretion

and violation of Petitioner's Due Process rights and released her entire $31,000.00 effective July 30, 1993, but without her knowledge. Unfortunately for the Petitioner this July 30, 1993 order also ***mysteriously disappeared for a period of 16 months, (discovered November 1994),*** prolonging the case and causing three expensive and unnecessary hearings to be held over a period of a year in an effort to have her funds released, when they had already been released by Court order, and the knowledge deliberately concealed. The disappearance of this order had also caused the Petitioner to withdraw her appeal of **Rule 60** under duress for the investigation of fraud. The court failed to notify the Petitioner's attorney that her Motion to Alter and/or Amend filed on her client's behalf for release of the $31,000.00 had been granted in the Petitioner's favor. However, this July 30, 1993 order "***did appear***" on the Trial Court's Minute Orders and was accessible to the Master and the Petitioner's attorney who should have properly used the order to ***officially close*** this case effective July 30, 1993. Both continued to improperly charge the Petitioner legal fees after this date.

August 19, 1993 the presiding Judge recused himself. He also granted the Petitioner attorney's Motion to Terminate the Master's Services, effective the same date (August 19, 1993), based on the fact that Mr. Frederiksen continued to charge legal fees to the parties although he no longer had official

duties. The Trial Court again failed to transmit this Order to Petitioner's attorney, and this time failed to enter it on the Court's Minute Orders; thus neither Petitioner nor her counsel knew that the Master's services had been terminated, only the Court and Mr. Frederiksen knew. But again, unfortunately for the Petitioner this August 19, 1993 order also ***mysteriously disappeared for a period of 27 months (discovered November 1995).*** This order ***(for a second time)*** should have been properly used by the Court or Master to close this case effective August 19, 1993 since the Court had already released the Petitioner's $31,000.00 twenty days earlier on July 30, 1993. Mr. Frederiksen continued charging Petitioner Gwen Wright legal fees and also failed to release her $31,000.00 he was still holding in violation of the July 30, 1993 order.

On March 23, 1994 the Trial Court again granted the Petitioner attorney's **second** Motion to Terminate Master's Services based on the same reasons as her first July 1993 Motion, that Mr. Frederiksen continued to charge the parties legal fees although he performed no official duties. And again, unfortunately for the Petitioner this second order terminating his services that was also granted in her favor, ***mysteriously disappeared for a period of 11 months, (discovered February 1995).*** And once again, ***(for a third time)*** the court failed to notify the Petitioner's counsel that her second Motion to

terminate the Master's services had been granted. However, this order ***"did appear"*** on the Court's Minute Orders and presented an opportunity for the Court, the Master or the Petitioner's attorney to officially close this case ***(for a third time)*** in March 1994. And again, this case was prolonged with the Mr. Frederiksen and the Petitioner's attorney continuing to charge her legal fees.

There are a total of five known signed Court orders to conveniently disappear, placing the Petitioner's case in serious jeopardy by depriving her of representation and the benefits of orders granted in her favor; also significantly depriving her of her Civil Rights, Due Process of Law and equal protection of the law. As stated three of these orders should have closed the case in 1993/1994. Five signed court rulings to mysteriously disappear and all doing severe damage to the Petitioner's case is very excessive and shows a predetermined pattern that cannot be rationalized as an isolated mistake or harmless error. In all instances her case was prolonged (for years) and accommodated Mr. Frederiksen's ultimate plan to extort significant financial benefit from the Petitioner by reducing his erroneous billing for unearned legal fees to a Judgement which has necessitated this Petition. He made a statement to the court indicating he was still charging legal fees, by merely opening his mail. Shockingly this admission of his unlawful conduct was made at the

September 13, 1994 hearing before the very same Judge who had terminated his services months earlier, for the second time (March 23, 1994), and for the exact same reason of continuing to charge legal fees and no longer performing official duties in the case. This Judge joined in the charade, but could have ended the case that very day pursuant to his own order terminating Mr. Frederiksen's services, even though the initial order by the previous Judge terminating his services effective August 19, 1993 was still effectively missing. However, implicit in the **Colorado Rules of Professional Conduct,** he had an ethical duty to withdraw from his position on his own recognizance, when he knew his official duties were completed with or without official notification to terminate.

On February 22, 1995, the parties (John and Gwen Wright) appeared before the Trial Court for the third time regarding the release of the remainder of the Petitioner's $31,000.00 dollars, still being held by Mr. Frederiksen in violation of the July 30, 1993 order. The second Court order terminating his services effective March 23, 1994 had been discovered after being missing for 11 months. Using this order the Court found that Mr. Frederiksen was not entitled to any fees incurred after that time. The Court entered an order February 22, 1995 regarding payment of the balance of Mr. Frederiksen's fees. The initial August 19, 1993 order terminating his services was still effectively missing at the time of this Court ruling.

Because the Petitioner had questions remaining regarding several discrepancies of overcharges and duplicate billing on Mr. Frederiksen's previous billing statements she did not immediately pay the erroneous bills, as she was waiting for a corrected itemized statement. Mr. Frederiksen as Master, over a period of many months ignored numerous requests from her attorney to reconcile his erroneous billing. **See Appendix J.** Refusing to correct his billing Mr. Frederiksen filed a Motion to reduce the fees to Judgement on **Nov. 3, 1995,** with the overcharges and duplication discrepancies included in his Judgement.

The initial court order terminating Mr. Frederiksen's services effective **August 19, 1993** that had been missing 27 months was discovered **November, 1995,** after he had filed his Judgement for unearned legal and collection fees. Based on this new information, attorney for Petitioner **filed a Rule 60 Motion on November 17, 1995** asking the Trial Court to reconsider its orders regarding the Master's fees. The **Rule 60** Motion apprised the court of the following **on going fraudulent abuses** used by Mr. Frederiksen against the Petitioner: " **(1)** Bills submitted to the Court by Paul Frederiksen were false and misleading. **(2)** The Court appointed Master charged for a four hour hearing when the hearing was only two hours. **(3)** Additionally the Court Appointed Master bills the Respondent for ex parte phone calls which form the basis of a **civil suit against**

the Court Appointed Master. (4) That same **constitutes fraud and misrepresentation on the part of the Master** which would necessitate setting the Order aside based on **C.R.C.P. Rule 60. (5)** That the Special Master's allegation that he expended 1.5 hours of time ($225.) in his research and preparation of the Verified Motion and Order is not reasonable, necessary, and simply is outrageous based on the length of the Motion and the issues involved. **(6)** That the Court appointed Master **is again** attempting to mislead this Court and take advantage of the Respondent."

Nonetheless, the Trial Court entered the Master's (Mr. Frederiksen) Judgment on October 10, 1996, constructively denying the Petitioner's **Rule 60** Motion. Petitioner appeals these Orders for Judgment and the constructive denial of her Rule 60 Motion for Reconsideration because it was an abuse of discretion for the Trial Court to favor the Master in this situation.

Where necessity for relief from judgement on basis of fraud comes to attention of court, procedural rule providing relief from final judgement on ground of fraud, whether intrinsic or extrinsic, may be invoked without requiring filing of Motion so denominated. **Rules Civ. Proc., Rule 60 (b) (2).**

The reason for allowing direct attack on any judgement for fraud is that the defendant has by deception been deprived of his day in court and has thereby

suffered harm. The essential factor is the deprivation of a fair trial. **In re Marriage of Park, 27 Cal, 3d 337, 165 Cal. Rptr. 792, 612 P.2d 882 (1980). Pacific Reporter , Judgement 384.**

Since the Trial Court had already once found that a previously lost order was dispositive on the issue of the Master's fees, it is confusing as to why the Trial Court would refuse to review the new-found August 19, 1993 Court order terminating the Master's services when it was presented in the Petitioner's (Gwen Wright) **Rule 60** Motion. Instead the Trial Court entered the Master's (Paul Frederiksen) Verified Motion for Judgment with **no comment.**

Certainly the Master is entitled to be compensated fairly for his work. However, he is not entitled to fees where he is no longer under mandate to assist in the proceedings. **Rule 1.5 of the Colorado Rules of Professional Conduct** states that " **(a)** lawyer's fee shall be reasonable." Implicit in this Rule is that a lawyer should **not double-bill.** Nor should a lawyer charge for services which are **inappropriate or illegal.**

> "It is professional misconduct for a lawyer . . . **(c)** engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and **(d)** engage in conduct that is prejudicial to the administration of Justice. . ."

Mr. Frederiksen has billed more than $3,000.00 in successfully reducing

the February, 1995 order to Judgment with the advantage of a significant increase with continued litigation. The original amount of fees that the Petitioner Gwen Wright was ordered to pay with over charges and duplicate charges still included was $586.19. The August 19, 1993 termination order was still missing.

Certainly if disappearing orders were indeed a mistake and not part of a predetermined plan to prolong litigation to extort legal and collection fees from the Petitioner, Mr. Frederiksen when presented with the newly discovered August 19, 1993 court order terminating his services would have acknowledged his mistake and allowed the unfortunate situation to be corrected and case closed. Instead, with total disregard for the truth he ignored the evidence proving his information to be false and fee's claimed unearned and states in his Judgement:

> "I Paul A. Frederiksen do hereby verify under the penalty of perjury that the facts stated in the forgoing pleading are true and correct to the best of my information and belief."

He made this oath under the protection of his official position and surety of backing by the Colo. Judicial System in his continued violation of the Constitutional rights of two African Americans for unlawful financial benefit.

To further illustrate his disrespect and animosity for the Petitioner, and continuous outrageous conduct outside his scope of authority, he introduced a ***twisted racist*** statement in his July 1996 Summary of Argument to the Trial

Court regarding "Gwen Wright and Slavery". On the surface his statement may appear to some as frivolous, irrelevant and unrelated. However, the message is clearly recognized by the Petitioner since she is an African American and a descendant of the slaves he referenced: That the Petitioner and her son, under his jurisdiction and power are as helpless as slaves and have no rights, "Human, Civil or otherwise" as "Master" he would be duty bound to respect and honor.

Records and extrinsic evidence supports the fact that; the Courts' and Master knowingly used inherent powers to discriminate and willfully neglect the helpless minor child for many months before appointing an absentee GAL, for record purposes only. In the eight months of his appointment the Petitioner and child never met or spoke with the GAL. The Trial Court denied the Petitioner attendance to the October 29, 1992 hearing where the GAL gave deliberate erroneous information and damaging recommendations to the Court that was used as a basis for decisions resulting in long term damage to the child and Petitioner. Petitioner's attorney filed an **Addendum Rule 60 Motion** on her behalf to apprise the court that the GAL had never met his client or Petitioner and to refute his deliberate lies presented to the Court. Nonetheless, **Addendum Rule 60** was denied with the Court's awareness of the harm to the child and the Petitioner Gwen Wright. Written Reports supporting the basis for Court's

decisions regarding custody of the minor child as required pursuant **C.R.S 14-10-124**, to protect the child were never prepared as afforded to other children. Discrimination against the minor child is also shown by Mr. Frederiksen as Master, providing false information for Item 6 of the Feb. 27, 1992 Permanent Orders referencing **C.R.S. 14-10-124** which was never considered or used.

State Courts' are clearly discriminating against the Petitioner when Mr. Frederiksen is granted a Judgement he filed as a non-party without ever naming himself as Appellee, and the Courts' arbitrarily denied her appeal and Petition; without considering or reaching the merits of her appeal, but on the basis that she responded in a manner corresponding with the caption used by Mr. Frederiksen -- without fairly considering evidence in the records and briefs proving activity outside the scope of his authority -- failing to examine his erroneous billing statements -- ignoring the Courts own termination orders, etc.

REASONS FOR GRANTING THE WRIT

(1) Government officials exploitation of litigants under their jurisdiction to obtain personal financial benefit with no services rendered under the color of official right threatens Constitutional rights of all citizens and destroys confidence in our Justice System. **(2)** Severe violations of the Petitioner's Civil Rights and those of her son (who was a minor) by the Colo. Courts' harmed and

significantly deprived them of Due Process , equal protection and representation free from intimidation. The Court's allowed Judicial appointees and legal professionals an opportunity to create and orchestrate situations and conditions to prolong a simple divorce action into an ***eight year*** litigation, to purposely obtain significant unlawful financial benefit from her case, resulting in serious emotional injury and physical health problems. **(3)** Three signed Court orders disappeared that should have officially closed this case July 30, 1993, or August 19, 1993, or March 23, 1994, allowed continued billing of legal fees, and created the opportunity for Mr. Frederiksen to file his current Judgement for unlawful legal and collection fees. **(4)** The Petitioner is arbitrarily denied Due Process when the Respondent is awarded his Judgement based on a **"Caption Error"** clearly initiated by him but blamed on the Petitioner, and the evidence in the records and briefs not fairly considered. **(5)** Discrimination against Petitioner and her son by legal enforcement severely deprived them of Civil rights, Due Process and equal protection; when these Constitutional rights were negated, in that any Pleadings filed on her behalf, challenging fraud and other unlawful acts perpetrated against them were arbitrarily denied, or Orders granted disappeared.

The key issue is whether citizens can be intentionally injured -- litigations unlawfully prolonged --litigants money taken through fraud, extortion,

and their legal counsels intimidated by officials, because they have inherent power to violate the law and deny Due Process to citizens they happen to dislike.

For eight years this case has been purposely prolonged for unlawful financial benefit for Mr. Frederiksen and others, causing severe damage to the lives of the Petitioner and her son, and damage to her health. These issues involved impact all citizens Constitutional rights and are sufficiently important to grant review for relief of final Judgement and remand for Trial by jury or Trial De Nova, which ever the Court deems proper for full disclosure and proper relief.

I beg the Honorable Court to accept this Petition as my, **"Plea for Justice under the Constitution and review.** I would also request the Court to consider my sincere efforts as a lay person in preparing this Petition for Writ of Certiorari to the best of my ability. The charges and facts presented in this Petition are true and can be proven beyond a reasonable doubt, from Court records including Mr. Frederiksen's ex parte dialog and extrinsic evidence, (witness testimony, audio tapes, etc.).

CONCLUSION

Respectfully Submitted;

The Petition For Writ Of Certiorari should be considered and granted.

Gwendolyn Wright

Gwendolyn Wright

Date Submitted Aug. 25 1998

Appeal from the District Court of the County of Arapahoe, State of Colorado, to the Colorado Court of Appeals. Opinion issued & judgment entered September 25, 1997, before Marquez, Ney and Roy, JJ.

COURT OF APPEALS, STATE OF COLORADO

2 East Fourteenth Avenue, Suite 300

Denver, Colorado 80203

(303) 837-3785

MANDATE

Court of Appeals No. 96CA2060

Trial Court No. 90DR2195

IN RE MARRIAGE OF: WRIGHT

This cause came to be heard on the record on appeal from the District Court of the County of Arapahoe, State of Colorado, and was argued by counsel. On consideration thereof, it is ordered that the APPEAL of said Court is DISMISSED.

DATE: May 7, 1998

APPENDIX A

SEAL: Court Of Appeals, Colorado

PATRICK STANFORD

Clerk of the Court

By: "/s/ April Gonzales"

Deputy Court Clerk

COURT OF APPEALS, STATE OF COLORADO

Certified to be a full, true and correct copy

Date: May 7, 1998

Clerk of Court of Appeals

By: "/s/ April Gonzales"

Deputy Clerk

Copies Mailed to

Counsel of Record

Tri. Ct. Clerk

AND w/opinion

ON 5 - 7 - 98

BY "/s/ A. G."

Colorado Court of Appeals

SUPREME COURT, STATE OF COLORADO

CASE NO. 97SC929

CERTIORARI TO THE COLORADO COURT OF APPEALS, 96CA2060

DISTRICT COURT, ARAPAHOE COUNTY, 90DR2195

ORDER OF COURT

In re the Marriage of:

GWENDOLYN WRIGHT,

Petitioner,

and

JOHN WRIGHT,

Respondent.

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

APPENDIX B

BY THE COURT, EN BANC, MAY 4, 1998cc:

Marcy L. Rothenberg-Romer

1780 S. Bellaire Street, #615

Denver, CO 80222

Lionel Menin

134 W. 11th Avenue

Denver, CO 80204

Paul A. Frederiksen

11479 S. Pine Drive

Parker, CO 80134

Honorable Timothy L. Fasing

Arapahoe County District Court

Arapahoe County Justice Center

7325 S. Potomac Street

Englewood, CO 80112

Clerk of the District Court

Arapahoe County District Court

Arapahoe County Justice Center

7325 S. Potomac Street

Englewood, CO 80112

Patrick H. Stanford, Clerk

Colorado Court of Appeals

Supreme Court

State of Colorado

Certified to be a full, true and correct copy

MAY 4, 1998

MAC V. DANFORD

Court Clerk of the Supreme Court

Seal By: "/s/ V. Keister"

V. Keister

Deputy Clerk

THE COURT OF APPEALS OF THE STATE OF COLORADO

Case Number 96CA2060

ORDER

IN RE MARRIAGE OF: WRIGHT

Upon consideration of the Petition for Rehearing filed by Appellant herein, the Petition is hereby DENIED. It is ordered that issuance of the Mandate is stayed to and including DECEMBER 15, 1997, provided that if a Petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the cause by the Supreme Court.

BY THE COURT:

Marquez, J.

Ney, J.

Roy, J.

DATED: NOVEMBER 13, 1997

SEAL: COURT OF APPEALS, COLORADO

APPENDIX C

COPIES MAILED TO:

COUNSEL OF RECORD

ON: 11-13-97

BY:

COLORADO COURT OF APPEALS

COLORADO COURT OF APPEALS September 25, 1997

No. 96CA2060 NOT SELECTED FOR PUBLICATION

In re the Marriage of

John J. Wright,

Appellee,

and

Gwendolyn Wright,

Appellant.

Appeal from the District Court of Arapahoe County

Honorable Timothy L. Fasing, Judge

No. 90DR2195

Division IV APPEAL DISMISSED

Opinion by JUDGE MARQUEZ

Ney and Roy, JJ., concur

No Appearance for Appellee

Marcy L. Rothenberg-Romer, Denver, Colorado, for Appellant

APPENDIX D

In this dissolution proceeding between Gwendolyn Wright (wife) and John J. Wright (husband), wife appeals the judgement entered in favor of Paul A. Frederiksen (master). We dismiss the appeal without prejudice.

The master was appointed pursuant to C.R.C.P. 53 to conduct a hearing and recommend permanent orders for husband and wife. The trial court entered judgment against wife and in favor of the master for $3849.10, representing his compensation and fees incurred for collection. Wife appeals the validity of those fees on various grounds; however, we do not reach the merits of the appeal, but rather dismiss the appeal because wife failed to name the master as an appellee.

Generally, a non-party who seeks to challenge an award of fees, or to contend that certain fees should be awarded, may intervene in a case and assert that claim on appeal. See Adams v. Neoplan U.S.A. Corp., 881 P. 2d 373 (Colo. App. 1993) (in order to appeal award of fees assessed against attorney, attorney must either file separate notice of appeal or be added as appellant to client's notice of appeal); Roberts-Henry v. Richter, 802 P.2d 1159 (Colo. App. 1990) (witness has standing to appeal an order if it appears that witness was substantially aggrieved by the disposition of the case in the trial court; witness was named in caption under byline "and concerning"); see also E & A Associates v. First National Bank, 899 P.2d 243 (Colo. App. 1994) (in

order to appeal, aggrieved partner must either file a separate notice of appeal or be added as an appellant to the partnership's notice of appeal). The rationale justifying this practice is that a non-party has been aggrieved by the adjudication.

The above cases involve situations in which the non-party is the one aggrieved. Here, we have the opposite situation, in that wife, a party, asserts that she is aggrieved by the non-party's actions. Even so, we conclude that the non-party must be made a party to the appeal.

An appeal requires a justiciable controversy, which in turn requires the presence of adverse parties. Thus, there must be a party seeking to establish a right and a party against whom the right is asserted. Adams v. Neoplan U.S.A. Corp., supra.

Here, wife named husband, rather than the master; as the appellee. However, at this juncture of the case, wife's contentions are not asserted against husband, but only the master. Thus, the appeal cannot lie and must be dismissed.

Appeal dismissed without prejudice.

JUDGE NEY and JUDGE ROY concur.

COLORADO COURT OF APPEALS

ORDER

No. 96CA2060

Tr. Ct. No. 90DR2195

In re the Marriage of

John J. Wright,

Appellee,

and

Gwendolyn Wright,

Appellant.

To: Appellant

From the notice of appeal filed by appellant and the register of actions submitted by the clerk of the district court, it appears that the trial court entered a final judgement in favor of petitioner and against respondent on October 10, 1996; that the trial court amended its order on November 14, 1996; that the notice of appeal was filed on November 18, 1996; and that the amended notice of appeal as to the November 14, 1996 order was filed on November 25, 1996.

However, it appears that post-trial motions as to the October 10, 1996 order were due on or before October 25, 1996, but that neither party filed such a motion. Accordingly, it appears that the trial court lacked jurisdiction to enter

the November 14, 1996 order, and that this court thus lacks jurisdiction to review that order.

IT IS THEREFORE ORDERED that appellant shall show cause, if any there is, in writing on or before January 27, 1997, why this appeal should not be dismissed with prejudice as to the November 14, 1996 order for lack of jurisdiction.

BY THE COURT

Dated: January 13, 1997

Copies to: Counsel of Record

cam/sc

COPIES MAILED TO

COUNSEL OF RECORD

ON: 1-13-97

BY:

COLORADO COURT OF APPEALS

SUPREME COURT, STATE OF COLORADO

Case No.

PETITION FOR WRIT OF CERTIORARI

On Certiorari to the Colorado Supreme court

Court of Appeals Case No. 96 CA 2060

In re the Marriage of:

JOHN WRIGHT, Petitioner/Respondent,

and

GWENDOLYN WRIGHT, Respondent/Petitioner in the within action.

"/s/ Marcy L. Rothenberg-Romer."

Marcy L. Rothenberg-Romer, #11506

Attorney for Respondent/Petitioner

1780 S. Bellaire St. #615

Denver, CO 80222

(303) 759-9111

APPENDIX F

COMES NOW the Petitioner, Gwendolyn Wright, by and through her attorney, Marcy L. Rothenberg-Romer, and requests the Court to issue a Writ of Certiorari to review the Court of Appeals decision dismissing her Appeal in Case No. 96 CA 2060.

I. ADVISORY LISTING OF ISSUES PRESENTED FOR REVIEW

A. Whether the Court of Appeals erred in dismissing Petitioner, Gwendolyn Wright's Appeal for failure to list a non-party as a party to the appeal.

II. OFFICIAL OPINIONS OF THE COURT OF APPEALS

A. See attached opinion dated September 25, 1997 and dated November 13, 1997. Case No. 96 CA 2060, Trial Court case No. 90 DR 2195 in which Petitioner herein was the Appellant.

III. JURISDICTION OF SUPREME COURT

This court's jurisdiction is invoked pursuant to Colo. Const. Art. VI, 2(s); 13-4-108 CRS and C.A.R. 49.

A. Date of Court of Appeals judgment - September 25, 1997.

B. Date of denial of Petition for RE-hearing - November 13, 1997 - Petitioner was the appellant. The Court of Appeals granted Petitioner, Gwendolyn Wright up to and including December 15, 1997 to file a Petition for Writ of Certiorari.

IV. STATEMENT OF THE CASE

Paul Frederiksen, Esq. was appointed by the Trial Court as Master in the parties' Dissolution of Marriage action, John Wright and Gwendolyn Wright in District Court Case 90 DR 2195.

On or about November 6, 1995, the Court Appointed Master, Paul Frederiksen, filed a Verified Motion for Judgment in the District Court case against Petitioner, Gwen Wright, Case No. 90 DR 2195 for collection of fees. The Verified Motion for Judgment was filed by the Master under the case caption of John J. Wright, Petitioner and Gwendolyn Wright, Respondent, Case No. 90 DR 2195 (see attached Exhibit "A").

After written responses back and forth, and arguments submitted in writing by the Master and the Petitioner, the Trial Court entered judgment in favor of the Master against Petitioner, Gwen Wright, on or about October 10, 1996, and then entered a Corrected Order for Judgment on November 14, 1996 (See attached Exhibits "B" and "C"). **That at no time did the Master seek to be named party to the action nor was he ever a named party to Case No. 90 DR 2195.**

Petitioner, Gwen Wright, timely filed her Notice of Appeal of said order and judgment and then filed an Amended Notice of Appeal based on the Corrected Order of judgment of November 14, 1996. The Court of Appeals, on or about

July 13, 1997, issued a Show Cause Order to Petitioner, Gwen Wright, why the Appeal should not be dismissed with prejudice as to the November 14, 1996 Order for lack of jurisdiction (see attached Exhibit "D"). Petitioner, Gwen Wright, filed a Response to Show Cause and the Show Cause was subsequently dismissed (see attached Exhibit "E"). Petitioner, Gwen Wright, timely filed her Brief in this matter which contained a cover page with the Master's name on it, but which did not specifically name the Master as a party. All pleadings were filed in the Court of Appeals with the identical caption used in the District Court, including the Verified Motion for Judgment filed by the Magistrate.

On or about the 25th day of September, 1997, the Court of Appeals Dismissed Petitioner, Gwen Wright's Appeal based on the fact that she had failed to name the Master as an Appellee/party (see attached Exhibit "F"). Petitioner, Gwen Wright, filed a Petition for Re-hearing which was denied by the Court of Appeals on November 13, 1997 (see attached Exhibit "G").

V. ARGUMENT

Review on Certiorari by this Court is a matter of sound judicial discretion and should be granted only where there are special and important reasons therefor. [C.A.R. 49(a); **Sutterfield v. District Ct. 165 Colo. 225, 438 P. 2d 236 (1968).**] The instant case is clearly one of special importance, particularly in light of the constitutional ramifications.

A review of the attached document indicates that no pleading in the District Court case from which Petitioner, Gwen Wright, appealed had ever been brought by the Master in his own name. As a matter of fact, his Verified Motion for Judgment and both orders for judgment did not refer to him as a party anywhere in the caption. Fairness and equity dictate that if a judgment could be entered against an individual, to-wit, Petitioner, Gwen Wright, herein, for the benefit of a non-party that the appeal from that judgment does not need to specifically name the non-party.

The Court of Appeals in dismissing the Appeal relies on case law which discusses only situations in which the non-party is the one aggrieved. In the instant case, it is the aggrieved party who has brought the appeal and done so in the exact fashion as all relevant prior motions, judgments, and orders. The Master clearly knew that he was an adverse party to this case based on the fact that the judgment being appealed from in this matter was one that was entered against Petitioner in his favor only. The Master was provided with all documents in this Appeal, including the Notice of Appeal, Brief, Response to Show Cause, etc.

Additionally, when the Court of Appeals issued its Show Cause Order in January, 1997, it did not indicate to Petitioner, Gwen Wright, that there was any issue with reference to the case caption or the parties' names.

The Court of Appeals dismissal of the Appeal herein, results in Petitioner, Gwen Wright, virtually being denied her rights of due process under the Constitution of the State of Colorado and the United States Constitution. The Doctrines of Equity and Fairness require that Petitioner, Gwen Wright, be allowed to proceed in this matter, particularly in light of the fact that a non-party, who was never named in any court pleading as a party, has been allowed to obtain a judgment against Petitioner, Gwen Wright. If the Court of Appeals' reasoning is followed, then Petitioner, Gwen Wright, has no recourse against the Master even though the Master, a non-party, has full legal rights with respect to obtaining and collecting a judgment against Petitioner.

Petitioner, Gwen Wright, hereby request that this Honorable Court grant a Writ of Certiorari to review the decision of the Court of Appeals dismissing her appeal in Case No. 96 CA 2060, Trial Court Case No. 90 DR 2195. Petitioner, Gwen Wright would further request that this Honorable Court determine that this matter should not have been dismissed and allow Petitioner to re-file an Amended Notice of Appeal naming the Master as set forth in the Court's Order and proceeding on the Appeal, or in the alternative proceed as previously filed. If this matter is dismissed without any further opportunity allowing Petitioner, Gwen Wright, to re-file this matter and proceed, she will de denied her due process rights as set forth in the Constitution and will be unduly and extremely

prejudiced. Conversely, Paul Frederiksen, the Court appointed Master will have full opportunity to collect on the Judgment obtained against Petitioner, Gwen Wright, without being a party to that action, effectively giving him more than full protection of the Constitution.

Respectfully submitted,

"/s/ Marcy L. Rothenberg-Romer"

Marcy L. Rothenberg-Romer

Attorney for Respondent-Appellant

1780 S. Bellaire St. #615

Denver, CO 80222

(303) 759-9111

(303) 759-9126 Fax

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Exhibits

A. Verified Motion for judgment

B. Order for Judgment

C. Corrected Order for Judgment

D. Order to Show Cause

E. Order Discharging Order to Show Cause

F. Order re Dismissal of Appeal

G. Order Denying Petition for Re-hearing

Certificate of Mailing

I hereby certify that on this 11th day of December, 1997, I deposited a true and correct copy of the foregoing Petition for Writ of Certiorari in the United States mail, proper postage prepaid, addressed as follows:

Lionel Menin, Esq.
134 W. 11th Avenue
Denver, CO 80204

Paul A. Frederiksen, Esq.
11479 S. Pine Drive
Parker, CO 80134

Arapahoe County District Court
7325 S. Potomac Street
Englewood, CO 80112

Colorado Court of Appeals
Colorado State Judicial Building
2 E. 14th Avenue
Denver, CO 80203

"/s/ Theresa Rawlings"

Theresa Rawlings

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO

Case No. 90 DR 2195 Div. 9

Verified Motion for Judgment

In re the Marriage of:

John J. Wright, Petitioner,

and

Gwendolyn Wright, Respondent.

The Court appointed special master, Paul A. Frederiksen, in this matter requests entry of Judgment against Respondent, Gwendolyn Wright and in his favor for unpaid court ordered fees. In support thereof the Master states as follows:

1. This Court enter an order on February 22, 1995 that Respondent Gwendolyn Wright shall pay to Paul A. Frederiksen $586.19 on or before April 1, 1995 and that payment should be by certified check or money order only.

2. Respondent, Gwendolyn Wright has failed to make any payments.

3. The balance due is $586.19 plus $23.45, for interest from April 1, 1995 until November 1, 1995, for a total of $609.64 plus $.13/day after November 1, 1995.

EXHIBIT A

4. The special master has expended 1.5 hours of his time in research and the preparation of this motion and order. The reasonable value of his time is $150.00 per hour for a total of $225.00.

5. The special master may incur additional time expense and costs in the collection of his court ordered fees from the Respondent.

Wherefore, the special master request that the Court enter judgment against Respondent, Gwendolyn Wright and in favor of Paul Frederiksen for unpaid court ordered fees in the amount of $609.64 plus $.13 per day after November 1, 1995, plus $225.00 as the reasonable expenses and cost of collection to date, plus such further reasonable fees, expenses and costs as are incurred in the collection of these court ordered fees.

Respectfully Submitted,

"/s/ Paul A. Frederiksen"

Paul A. Frederiksen No. 7603
Court Appointed Master
11479 S. Pine Drive
Parker, Colorado 80134
(303) 841-4545

VERIFICATION

I Paul A. Frederiksen, do hereby verify under the penalty of perjury that the facts stated in the foregoing pleading are true and correct to the best of my information and belief.

"/s/ Paul A. Frederiksen"

Paul A. Frederiksen

STATE OF COLORADO

SS

COUNTY OF DOUGLAS

Subscribed and sworn to before me _____.

My commission expires: _____.

_____

Notary Public

Address:

CERTIFICATE OF MAILING

I do hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid on 11-3-95, properly addressed to:

Marcy Rothenberg-Romer

1780 S. Bellaire #615

Denver, Colorado 80222

Lionel Menin

134 W. 11th Avenue

Denver, Colorado 80204

"/s/ Paul A. Frederiksen"

Paul A. Frederiksen

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO

Case No. 90 DR 2195 Div. 9

Order for Judgment

In re the Marriage of:

John J. Wright, Petitioner,

and

Gwendolyn Wright, Respondent.

The Court having reviewed the motion of the special master, Paul A. Frederiksen, all related objections, responses and motions and being fully advised enters the following order:

Judgment shall enter against the Respondent, Gwendolyn Wright and in favor of Paul A. Frederiksen in the amounts of:

Previously ordered fees and interest to 6/30/96	$ 641.10
Interest from 7/1/96 to date at $.13/day	———
Collection fees, expenses and costs to date	$ 3,208.00
Total Judgment	**$ 3208.00**

Judgment shall further include all further costs and reasonable fees incurred in the collection of this judgment.

EXHIBIT B

So Ordered this 10th day of October, 1996

By the Court "/s/ Timothy L. Fasing"

Timothy L. Fasing

District Judge

THE MOVING PARTY IS ORDERED TO PROVIDE A COPY OF THIS ORDER TO ALL PARTIES OF RECORD WITHIN FIVE (5) DAYS FROM THE DATE OF THIS ORDER AND FILE A CERTIFICATE OF COMPLIANCE.

TIMOTHY L. FASING

DISTRICT COURT JUDGE

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO

Case No. 90 DR 2195 Div. 9

Corrected Order for Judgment

In re the Marriage of:

John J. Wright, Petitioner,

and

Gwendolyn Wright, Respondent.

The Court having reviewed the motion of the special master, Paul A. Frederiksen, all related objections, responses and motions and being fully advised enters the following order:

Judgment shall enter against the Respondent, Gwendolyn Wright and in favor of Paul A. Frederiksen in the amounts of:

Previously ordered fees and interest to 6/30/96	$ 641.10
Collection fees, expenses and costs to date	$ 3,208.00
Total Judgment	**$ 3,849.10**

Judgment shall further include all further costs and reasonable fees incurred in the collection of this judgment.

EXHIBIT C

So Ordered this 14th day of November, 1996

By the Court "/s/ Timothy L. Fasing"

Timothy L. Fasing

District Judge

THE MOVING PARTY IS ORDERED TO PROVIDE A COPY OF THIS ORDER TO ALL PARTIES OF RECORD WITHIN FIVE (5) DAYS FROM THE DATE OF THIS ORDER AND FILE A CERTIFICATE OF COMPLIANCE.

TIMOTHY L. FASING

DISTRICT COURT JUDGE

COLORADO COURT OF APPEALS

ORDER

No. 96CA2060

Tr. Ct. No. 90DR2195

In re the Marriage of

John J. Wright,

Appellee,

and

Gwendolyn Wright,

Appellant.

To: Appellant

From the notice of appeal filed by appellant and the register of actions submitted by the clerk of the district court, it appears that the trial court entered a final judgement in favor of petitioner and against respondent on October 10, 1996; that the trial court amended its order on November 14, 1996; that the notice of appeal was filed on November 18, 1996; and that the amended notice of appeal as to the November 14, 1996 order was filed on November 25, 1996.

However, it appears that post-trial motions as to the October 10, 1996 order were due on or before October 25, 1996, but that neither party filed such a motion. Accordingly, it appears that the trial court lacked jurisdiction to enter

EXHIBIT D

the November 14, 1996 order, and that this court thus lacks jurisdiction to review that order.

IT IS THEREFORE ORDERED that appellant shall show cause, if any there is, in writing on or before January 27, 1997, why this appeal should not be dismissed with prejudice as to the November 14, 1996 order for lack of jurisdiction.

BY THE COURT

Dated: January 13, 1997

Copies to: Counsel of Record

cam/sc

COPIES MAILED TO
COUNSEL OF RECORD
ON: 1-13-97
BY:
COLORADO COURT OF APPEALS

COLORADO COURT OF APPEALS

ORDER

No. 96 CA 2060

Tr. Ct. No. 90DR2195

In re the Marriage of

John J. Wright,

Appellee,

and

Gwendolyn Wright,

Appellant.

The court, having considered the response to the Order to Show Cause,

ORDERS that the Order to Show Cause is discharged.

BY THE COURT: Criswell, J.

Marquez, J.

Kapelke, J.

Dated: January 24, 1997

Copies to : Counsel of Record

cam/3j

EXHIBIT E

COPIES MAILED TO

COUNSEL OF RECORD

ON 1/24/97

BY _____

COLORADO COURT OF APPEALS

COLORADO COURT OF APPEALS — September 25, 1997

No. 96CA2060 — NOT SELECTED FOR PUBLICATION

In re the Marriage of

John J. Wright,

Appellee,

and

Gwendolyn Wright,

Appellant.

Appeal from the District Court of Arapahoe County

Honorable Timothy L. Fasing, Judge

No. 90DR2195

Division IV — APPEAL DISMISSED

Opinion by JUDGE MARQUEZ

Ney and Roy, JJ., concur

No Appearance for Appellee

Marcy L. Rothenberg-Romer, Denver, Colorado, for Appellant

EXHIBIT F

In this dissolution proceeding between Gwendolyn Wright (wife) and John J. Wright (husband), wife appeals the judgement entered in favor of Paul A. Frederiksen (master). We dismiss the appeal without prejudice.

The master was appointed pursuant to C.R.C.P. 53 to conduct a hearing and recommend permanent orders for husband and wife. The trial court entered judgment against wife and in favor of the master for $3849.10, representing his compensation and fees incurred for collection. Wife appeals the validity of those fees on various grounds; however, we do not reach the merits of the appeal, but rather dismiss the appeal because wife failed to name the master as an appellee.

Generally, a non-party who seeks to challenge an award of fees, or to contend that certain fees should be awarded, may intervene in a case and assert that claim on appeal. See Adams v. Neoplan U.S.A. Corp., 881 P. 2d 373 (Colo. App. 1993) (in order to appeal award of fees assessed against attorney, attorney must either file separate notice of appeal or be added as appellant to client's notice of appeal); Roberts-Henry v. Richter, 802 P.2d 1159 (Colo. App. 1990) (witness has standing to appeal an order if it appears that witness was substantially aggrieved by the disposition of the case in the trial court; witness was named in caption under byline "and concerning"); see also E & A Associates v. First National Bank, 899 P.2d 243 (Colo. App. 1994) (in

order to appeal, aggrieved partner must either file a separate notice of appeal or be added as an appellant to the partnership's notice of appeal). The rationale justifying this practice is that a non-party has been aggrieved by the adjudication.

The above cases involve situations in which the non-party is the one aggrieved. Here, we have the opposite situation, in that wife, a party, asserts that she is aggrieved by the non-party's actions. Even so, we conclude that the non-party must be made a party to the appeal.

An appeal requires a justiciable controversy, which in turn requires the presence of adverse parties. Thus, there must be a party seeking to establish a right and a party against whom the right is asserted. Adams v. Neoplan U.S.A. Corp., supra.

Here, wife named husband, rather than the master; as the appellee. However, at this juncture of the case, wife's contentions are not asserted against husband, but only the master. Thus, the appeal cannot lie and must be dismissed.

Appeal dismissed without prejudice.

JUDGE NEY and JUDGE ROY concur.

THE COURT OF APPEALS OF THE STATE OF COLORADO

Case Number 96CA2060

ORDER

IN RE MARRIAGE OF: WRIGHT

Upon consideration of the Petition for Rehearing filed by Appellant herein, the Petition is hereby DENIED. It is ordered that issuance of the Mandate is stayed to and including DECEMBER 15, 1997, provided that if a Petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the cause by the Supreme Court.

BY THE COURT:

Marquez, J.

Ney, J.

Roy, J.

DATED: NOVEMBER 13, 1997

SEAL: COURT OF APPEALS, COLORADO

EXHIBIT G

COURT OF APPEALS, STATE OF COLORADO

Case No. 96 CA 2060, Trial Ct. No. 90 DR 2195

RESPONDENT-APPELLANT'S OPENING BRIEF

In Re the Marriage of:

JOHN WRIGHT, Petitioner-Appellee,
and
GWENDOLYN WRIGHT, Respondent-Appellant.

FROM A JUDGMENT OF THE DISTRICT COURT, FOR THE

COUNTY OF ARAPAHOE, STATE OF COLORADO

THE HONORABLE TIMOTHY L. FASING, PRESIDING

Case no. 90 DR 2195

Lionel M. Menin, #66

Attorney for Petitioner-Appellee

134 W. 11th Avenue

Denver, CO 80204

(303) 466-0160

APPENDIX G

Paul A. Frederiksen, #7603

Court Appointed Master

11479 S. Pine Drive

Parker, CO 80134

(303) 845-4545

Steven M. Zapiler, #15018

250 Steele Street #303

Denver, CO 80206

(303) 394-4900

Marcy L. Rothenberg-Romer, #11506

Attorney for Respondent-Appellant

1780 S. Bellaire St. #615

Denver, CO 80222

(303) 759-9111

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii, iii

QUESTIONS PRESENTED..... 1

REFERENCES IN THIS BRIEF..... 1

STATEMENT OF THE CASE..... 1

STATEMENT OF FACTS..... 4

ARGUMENT..... 11

A. APPELLANT'S DUE PROCESS RIGHTS WERE VIOLATED WHEN THE TRIAL COURT ALLOWED THE MASTER TO REDUCE HIS FEES TO JUDGMENT WHERE THE TRIAL COURT'S AND THE MASTER'S MISMANAGEMENT OF HER FILE RESULTED IN CONTINUED MASTER'S FEES AFTER HE HAD BEEN ORDERED TO TERMINATE HIS SERVICES, AND HAD SUBSEQUENTLY ADMITTED HE NO LONGER HAD OFFICIAL DUTIES IN THE CASE..... 13

B. THE TRIAL COURT ERRED IN ALLOWING THE MASTER TO COLLECT FEES AND IN DENYING WIFE'S RULE 60 FOR RECONSIDERATION WHERE THE MASTER'S FEES WERE INCURRED LONG AFTER THE MASTER'S SERVICES HAD BEEN TERMINATED BY THE COURT AND NO SERVICES WERE BEING RENDERED..... 16

C. THE MASTER'S FEES INCURRED IN REDUCING THE ORDER TO JUDGMENT AS WELL AS CERTAIN OF HIS FEES CHARGED THROUGHOUT THE PENDENCY OF THE CASE WERE EXCESSIVE AND/OR UNREASONABLE AND THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING THEM..... 18

CONCLUSION..... 20

TABLE OF AUTHORITIES

CASESCarlson v. Carlson, 497 P.2d 1006, 1008 (Colo 1972)..... 18

Colorado State Bd. Of Nursing v. Lang, 842 P.2d 1383, 1386

(Colo. Ct. App. 1992) cert. Denied (Colo. 1993)..... 19

Colorado State Claims Bd. v. DeFoor, 824 P, 2d 783, 799 (Colo. 1992)..... 18

DeFoor v. Colorado, 506 U.S. 981..... 19

In re the Interest of A.R.W., 903 P.2d 10, 13 (Colo. Ct. App. 1994)..... 15

Miller v. Clark, 356 P. 2d 965 (Colo. 1960)..... 14

People v. Franks, 791 P. 2d 1 (Colo. 1990)..... 17

People v. Guyerson, 898 P. 2d 1062 (Colo. 1995)..... 17

People v. Kibel, 701 P. 2d 37, 43 (Colo. 1984)..... 19

(quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972))..... 19

Reasoner v. District Court, 594 P. 2d 1060 (Colo. 1979)..... 13

Rubins v. Plummer, 813 P. 2d 778, 779 (Colo. Ct. App. 1990)

cert. Denied (Colo. 1991)..... 19

Town of DeBeque v. Enewold, 606 P. 2d 48, 54 (Colo. 1980)..... 13

STATUTES

Colo. Const. Art. 11, Sec. 25..... 18

C.R.C.P. Rule 53..... 15

C.R.C.P. Rule 53(a)(1991)..... 15

C.R.C.P. Rule 53(e) (2)..... 2

C.R.C.P. Rule 60..... 11, 13, 20

C.R.C.P. Rule 60(a)..... 13, 20

C.R.C.P. Rule 60(a) and (b) (1990)..... 20

C.R.C.P. Rule 60(b) (4) and (5)..... 11, 13

C.R.P.C 1.5..... 16

C.R.P.C. 8.4 (1996 Cum. Supp.)..... 17

U.S. Const. Amend. XIV..... 18

REFERENCES IN THIS BRIEF:

References to the Trial Court Record shall be designated "Record at Page." Appellant shall be referred to as "Wife." Appellee shall be referred to as "Husband." The Special Master appointed to this case pursuant to C.R.C.P. Rule 53 shall be referred to as "Master."

QUESTIONSPRESENTED

I. **WHETHER THE TRIAL COURT ERRED IN ALLOWING THE MASTER TO COLLECT FEES WHERE THE FEES WERE INCURRED LONG AFTER THE MASTER'S SERVICES HAD BEEN TERMINATED BY THE COURT.**

II. **WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING THE MASTER TO COLLECT THOSE FEES INCURRED IN REDUCING THE ORDER TO JUDGMENT AS WELL AS APPROVING CERTAIN OF HIS FEES CHARGED THROUGOUT THE DURATION OF THE CASE WHERE THOSE FEES WERE EXCESSIVE AND/OR UNREASONABLE.**

III. **WHETHER THE TRIAL COURT VIOLATED APPELLANT'S DUE PROCESS RIGHTS BY ALLOWING THE MASTER TO COLLECT FEES INCURRED AFTER HE HAD BEEN ORDERED TO TERMINATE HIS SERVICES.**

REFERENCES IN THIS BRIEF

References to the Trial Court Record shall be designated "Record at page." Appellant shall be referred to as "Wife." Appellee shall be referred to as "Husband." The Special Master appointed to this case pursuant to C.R.C.P. Rule 53 shall be referred to as "Master."

STATEMENT OF THE CASE

The parties were married on February 21, 1975. (Record at 31.) Husband filed a Petition for Dissolution of Marriage on September 20, 1990. The Trial Court appointed a master to determine the Permanent Orders Pursuant to C.R.C. P. Rule 53. (Record at 12.) The Master conducted Permanent Order proceedings in this matter, including a determination of custody and visitation, and recommended orders in his Master's Report of October 23, 1991. The Trial Court entered the Master's recommended Permanent Orders on October 28, 1991 prior to the expiration of time for the Wife to file objections thereto clearly did not conform to the July 25, Order of reference in that custody and visitation settlement was not assigned under the Order. (Record at 89-91.) On November 1, 1991, prior to learning that Permanent Orders had been entered by the Trial Court, Wife filed an objection to the Master's report pursuant to C.R.C.P. Rule 53(e) (2) and requested a trial de novo. (Record at 61.)

The Trial Court held a hearing on Wife's Objection (Record at 100), but reinstated the Master's report as its Permanent Orders with some minor changes. (Record at 94.)

The Master remained on the case following the Permanent Orders over Wife's objections (Record at 305, 638, 779), to settle some remaining Permanent Orders issues. These issues were resolved by the Court in May of 1993. (Record

at 282-283.) The Trial Court then terminated the Master's services at Wife's request. (Record at 779-80.) However, the Trial Court failed to transmit the Order to counsel of record, and thus neither Wife nor her counsel knew that the Master's services had been terminated. This order of August 1993 officially terminating the Master's services disappeared from the Court file, was not contained in the Minute Orders, and was discovered in November, 1994. The Master continued charging Respondent legal fees although he had no official duties.

Wife requested again in February, 1994 that the Master's services be terminated. (Record at 638-39.) As before, this motion was granted (Record at 639), however, the Trial Court once again failed to notify Wife's counsel of that fact. This Order was not contained anywhere in the Court file nor in the Minute Orders.

In February, 1995, the parties appeared before the Trial Court for resolution of several outstanding issues. (Record at 765.) The Trial Court found that the Motion to Terminate Master's Services had been granted on March 23, 1994, and that the Master was not entitled to any fees incurred after that time. (Record at 767-68.) The Trial Court then entered an order regarding payment of the balance of the Master's fees. (Record at 769-70.) The Court and the parties were still unaware of the initial August 19, 1993 Order of termination.

Because Wife had questions remaining regarding several discrepancies in the Master's billing statements, she made numerous attempts to reconcile and requested an itemized statement. She did not immediately pay the judgment. (Record at 785.) The master ignored her request and filed a motion to reduce the portion of the fees owed by Wife to judgment. (Record at 772.) As noted above, Wife's counsel, on review of the Trial Court file, discovered the August 19, 1993 Order terminating the Master's services. (Record at 779.) Based on this new information, counsel for Wife filed a Rule 60 Motion asking the Trial Court to reconsider its orders regarding the Master's fees. (Record at 774-75, 777-80.)

Nonetheless, the Trial Court entered the Master's judgment on October 10, 1996, constructively denying Wife's Rule 60 motion. (Record at 850.) Because the Trial Court made an error in addition, it re-entered a Corrected Order for Judgement on November 14, 1996. (Record at 849.) Wife appeals these Orders for Judgment and the constructive denial of her Rule 60 motion for reconsideration.

STATEMENT OF FACTS

The Master was appointed by the Trial Court on July 25, 1991. The Minute Order setting forth the appointment only stated that the matter was referred to a Master pursuant to C.R.C.P. Rule 53 and that the parties were to reimburse the Master in such percentage as their incomes bear to one another.

The scope of the Master's jurisdiction was assigned with a limited Order of reference by the Court on July 25, 1991. (Record at 12.) The matter then went before the Master on Permanent Orders. The Master heard Permanent Orders and proceeded to make his report to the Trial Court. (Record at 89-92.) The Trial Court then entered the Master's report as its Permanent Orders without giving Wife the opportunity to object as provided in C.R.C.P. Rule 53. Wife did object to the Permanent Orders and was forced to file two motions in order to get her objections heard before the Trial Court, needlessly incurring additional attorneys fees and costs. (Record at 73-76, 100-02.) The Trial Court then entered Permanent Orders, addressing only some of Wife's concerns. Record at 93-95. Wife's primary objection to the Master's report was his decision regarding forced custody of the parties' son despite his knowledge of her disability and the child's emotional state. Hulband requested that custody be given to Wife. (Record at 31, 62.) However, Wife was concerned about having sole custody and wanted input from the Husband about raising their son; she therefore requested a joint custody arrangement. The Master's report ignored Wife's request and instead stated that custody would be given to Wife "by agreement of the parties." (Record at 90.) In fact, there was no agreement.

The fact that the Master ignored Wife's apprehension regarding her son's care illustrates a pattern of behavior by the Master whereby he continually

ignored Wife's legitimate concerns and wishes, and twisted his orders and recommendations to the Trial Court to suit his particular bias. The Master allowed the Husband to dispose of an excessive amount of marital assets for expensive gifts and travel in violation of the 1990 Court ordered Temporary Injunction that was in effect. The Master purposely did not consider the thousands already spent by the Husband as a portion of the marital assets already taken. He went even further in his bias against the Respondent and allowed a third party to share in the division of marital assets through fraudulent transfers. The Master acknowledged his awareness of the violation to the Respondent in his ex parte call. Another example was the Master's behavior in "assisting" the parties to dispose of certain assets pursuant to Permanent Orders. In those Orders the parties were ordered to sell a residence they owned jointly. (Record at 90.) Because Husband, Husband's counsel and the Master were frustrated by Wife's legitimate questions regarding the listing agent and the listing price and being excluded from participation, Husband's counsel submitted to the Thial Court an Order ostensibly prepared by the Master which allowed the Clerk of the Court to sign the listing agreement on her behalf. (Record at 152-54.) However, the Order was clearly prepared by Husband's counsel, not the Master. Wife objected (Record at 147), but it became clear that the Master supported the Husband's initiative to cut Wife out of the process of selling the family home as

he participated in having Husband's counsel prepare the Master's Order for his signature. (Record at 159.)

It became increasingly apparent to Wife that somehow the Master had been "captured" by Husband and his counsel. For example, the bigamy committed on November 2, 1991 by the Respondent's husband and an acquaintance of the Husband's attorney was ignored and covered up by the Master, but acknowledged by the Master in his ex parte dialogue with the Respondent on March 23, 1993. Additionally, the closing on the sale of the marital residence was set for May 14, 1993. (Record at 287.) Both Husband and Wife planned to be present. However the closing was abruptly moved up by the Master to May 11 without the knowledge or consent of Wife. The Master knew that Wife was unable to attend the closing on May 11, yet he decided to go forward anyway, and have the Trial Court sign the paperwork involved. (Record at 287.) Ultimately the closing did not go forward as of that date due to the fact that Wife had placed a lis pendens on the property regarding an Appeal Wife had filed. (Record at 269, 288.) Wife was appealing the Permanent Orders based on new evidence which she had presented to the Trial Court in a Rule 60 motion, but which the Trial Court had denied. (Record at 200, 304.)

During the proceedings, the Master initiated improper ex parte conversations with the Wife concerning the sale of certain property as well as

other issues addressed in the Permanent Orders. (Record at 306, 318-33.) Wife's attorney was not present during these calls, nor was she notified that such calls were going to take place. (Record at 306.) During the calls the Master queried Wife regarding certain issues on which she disagreed with him and had filed motions. (Record at 318-33.) The Master acknowledged his awareness of the Husband's bigamy and excessive spending of marital assets for gifts and travel an the third party involvement. Wife became highly upset and felt these inquiries should have been directed to her attorney.

Because of the lis pendens filing the Trial Court, at the prompting of the Master, held a telephone hearing. Despite the fact that Wife's counsel was out of town and had requested that the hearing be postponed, the Trial Court with little notice went forward with the telephone hearing. (Record at 356-57.) The Trial Court immediately entered an order which the Master had pre-prepared concerning the placement of Wife's funds (of $31,000) in an escrow account controlled by the Master for the purpose of providing a supersedeas bond regarding the Appeal and ultimate distribution to the Husband's attorney to cover $3,400 of his time in responding to the appeal. The Trial Court properly granted the motion releasing all funds effective July 30, 1993. (Record at 282-83.)

Wife filed a Motion to Alter and/or Amend the Order based on the fact

that there was no need for a supersedeas bond to issue since all the funds from the sale of the property had been disbursed. (Record at 356-57.) The Trial Court properly granted the Motion effective July 30, 1993. (Record at 356.) However, the court failed to notify either of the parties that the motion had been granted which resulted in two more hearings being conducted regarding the issue of the escrowed funds which properly belonged to Wife and her withdrawal of her appeal to have her funds released. (Record at 573-575.)

Once the issues connected with Permanent Orders were resolved, the Master's mandate was completed. Wife filed a Motion to Terminate Master's Services in July, 1993, which was granted on August 19, 1993. (Record at 779.) However, the Court failed to transmit this Order to either of the parties or their counsel. Further, same did not appear in the Minute Order or anywhere in the Court file. Thus the Master remained on the case running up fees. (Record at 716-24.) Wife filed another Motion to Terminate Master's Services in February, 1994. (Record at 638-39.) This Motion was also granted, this time on March 23, 1994. (Record at 639.) But again the Order was not distributed to counsel of record, did not appear in the Minute Orders, and was effectively lost. In fact, this was the third Order of which the Trial Court failed to transmit to the parties which cost them unnecessary attorneys fees and costs. (Record at 356-57, 373-75). There has been a total of five Court rulings to disappear, vital to

the Wife receiving due process of law, equal protection of the law and representation.

On September 13, 1994, the Master admitted that he was no longer necessary to the proceedings, but that he was accruing fees because he was reviewing mail on the case. (Record at 843.) Despite the fact he was admittedly unnecessary to the case, the Master still managed to accrue fees of over $1,600 during the time period after his services were terminated. (Record at 716-18.)

In February, 1995, during a hearing, the Trial Court found the second order which terminated the Master's services as of March 23, 1994. (Record at 767.) The Trial Court was still unaware of the missing August 19, 1993 Order terminating the Master's service. In its Orders, the Trial Court found that the Master was not entitled to any fees accrued after March 23, 1994, and ordered that the parties were to divide equally those remaining fees, so that each party was ordered to pay $586.19. (Record at 769-70.)

Throughout the duration of the case, Wife questioned many of the Master's billing statements. (Record at 805-08.) Primarily she objected to being billed for inappropriate ex parte conversations which the Master held with her which went beyond the scope of his authority. (Record at 306, 318-33). The audio tape of the Master's ex parte call is 59 minutes in duration. Also some items were double-billed. (Record at 802.) The Master also billed the parties for

four hours for the Permanent Orders hearing which Wife's counsel's records showed only lasted two hours, and which took place in the Master's offices thereby negating any time spent for travel. (Record at 716, 844-45.) It is important to be aware of the Master's ongoing bias toward the Wife includes a subsequent call to Wife's counsel to falsely accuse Wife of initiating unsolicited calls to him. Wife, to prove his claim as false gave a copy of audio tape to counsel. The Wife's legal right to protection was compromised when rulings disappeared and from other situations which were totally not of her control and that of her legal counsel.

Because the Master failed to respond to Wife's legitimate concerns regarding his billing statements, Wife did not timely pay his fees. The master filed a Verified Motion for Judgment for approximately $600 in outstanding fees. (Record at 772.) Wife's counsel then reviewed the Trial Court file and discovered the August 19, 1993, Order terminating the Master's services. (Record at 779.) Based on this new information, counsel for Wife filed a Rule 60 Motion asking the Trial Court to reconsider its orders regarding the Master's fees. (Record at 774-75, 777-80.) Additionally, counsel for Wife contacted the Master to attempt to settle the situation. (Record at 787-88.) Instead of working out a compromise over the issue of the approximately $600 in fees, the Master proceeded to incur another $3,200 in fees to collect his $600 judgment in spite of

the fact he had already admitted he had no official duties after August 19, 1993. (Record at 823-24.)

It is important to note that the Orders re termination of the Master's services appear nowhere in the Minute Orders. Further, both counsel and Wife reviewed the Court file on numerous occassions. These Orders were not contained therein until the dates of discovery set forth above, long after they were entered.

The facts stated herein are just a few which clearly show a pattern of ongoing bias toward the Wife and her son resulting in far reaching and injurious consequences for both. It would be a miscarriage of justice to allow irrefutable evidence of misconduct by a Judicial Official for financial gain to be ignored by the court.

The Trial Court granted the Master's Verfied Motion for Judgment and allowed the Master's additional fees incurred in pursuing the Judgment, thus constructively denying the Wife's Rule 60 motion. (Record at 850.) Because the Trial Court made an error in addition, it reentered a Corrected Order for Judgment on November 14, 1996. (Record at 849.) Wife appeals these Orders for Judgment and the constructive denial of her Rule 60 motion for reconsideration.

SUMMARY OF ARGUMENT

Rule 60, C.R.C.P., allows a trial court to reconsider those judgments which may have been entered due to clerical errors arising from oversight or omission. Rule 60(a). It also permits a trial court to relieve a party from a final judgment where the underlying judgment upon which it is based has been reversed or vacated, as well as any other reason justifying relief from the operation of the judgment. C.R.C.P. Rule 60(b) (4) and (5). In this case, Wife's Rule 60 motion for reconsideration should have been granted based on the new information showing that the Master had been ordered to terminate his services in August, 1993. The Master's judgment for fees is based on an order which must be reconsidered and vacated in the light of this new fact. The Trial Court erred when it constructively denied Wife's Rule 60 motion for reconsideration, and entered the Master's Verified Entry of Judgment for fees incurred after his services had been terminated by the Trial Court and after he had admitted he no longer had official duties in the case.

Portions of the Master's fees were incurred due to improper and unofficial activities of the Master. In addition, the Master double-billed on at least one occasion and overcharged on another. The Trial Court abused its discretion when it did not disallow those fees which were clearly inappropriate. Furthermore, the Master's fees incurred in collecting the judgment against Wife

for his fees are excessive and violate the Rules of Professional Conduct. The Trial Court abused its discretion when it allowed the Master to collect these clearly excessive fees.

Due process also requires that the Entry of Judgment be vacated. Due process is grounded in fairness and equal protection of the law. Wife's due process rights were violated when the Trial Court ignored the July, 1993, and August, 1993 Orders and failed to disallow the Master's fees incurred after his termination. The Trial Court is inconsistent when it denied the Master's fees incurred after the March, 1994, order terminating his services, but failed to do the same once the August, 1993, order terminating his services came to light. This inconsistency is fundamentally unfair and denies Wife due process.

ARGUMENT

A. THE TRIAL COURT ERRED IN ALLOWING THE MASTER TO COLLECT FEES AND IN DENYING WIFE'S RULE 60 MOTION FOR RECONSIDERATION WHERE THE MASTER'S FEES WERE INCURRED LONG AFTER THE MASTER'S SERVICES HAD BEEN TERMINATED BY THE COURT AND NO SERVICES WERE BEING RENDERED.

Colorado Rules of Civil Procedure Rule 60 allows relief from a judgment

or order due to clerical errors "arising from oversight or omission. . . ." C.R.C.P. Rule 60 (a) (1990). Rule 60 also provides that a court may relieve a party from a final judgment where the underlying judgment "upon which it is based has been reversed or otherwise vacated," as well as for any other "reason justifying relief from the operation of the judgment." C.R.C.P. Rule 60 (b) (4) and (5) (1990).

The Colorado Supreme Court has determined that judicial as well as clerical errors arising from oversight or omission fall under purview of Rule 60. Reasoner v. District Court, 594 P. 2d 1060 (Colo. 1979). In addition, the Supreme court, in a case examining water court rules which provide for the correction of clerical mistakes, has stated that Rule 60 type rules are "designed to enable the trial court to amend its judgments to speak the truth" and not only apply to mistakes apparent on the face of the record, but cover mistakes "which cannot reasonably be attributed to the exercise of judicial consideration or discretion." Town of DeBeque v. Enewold, 606 P. 2d 48, 54 (Colo. 1980).

Certainly the misfiling of at least five signed court orders, the failure to transmit those signed court orders to the parties, and the failure to enter the signed orders on the record qualify as judicial and clerical errors designed to be corrected by Rule 60. Once the orders terminating the Master's services were located, the Trial Court, as well as the Master, had a duty to reassess the situation on motion by Wife. The Trial Court appropriately disallowed those of

the Master's fees charged after his services had been terminated pursuant to the March, 1994, court order. (Record at 767-68.) The Trial Court abused its discretion when it failed to consider the newly discovered August, 1993, Order regarding the Motion to Terminate Master's Services and to disallow those fees incurred after that date.

Reference to cases regarding Guardian ad Litems is instructive. In Miller v. Clark, 356 P. 2d 965 (Colo. 1960), a Guardian ad Litem was appointed in order to protect the rights of potential minor or disabled heirs. The trial court subsequently determined that no minor or disabled heirs existed. The Colorado Supreme Court found that this determination extinguished the Guardian's appointment and "thereafter he had no capacity or standing to proceed further." Id. at 967. As such, the Guardian ad Litem was not permitted to charge to the estate any part of his expenses or fees from the time of the order of determination, including those connected with bringing his appeal. Id. Also relevant is the fact that no formal notice was given to the Guardian that his services had been terminated; only an order determining that no minor heir existed. Yet the Supreme Court found that once the order had been entered, it was dispositive on the issue of the Gardian's fees. Id.

In another case regarding the appointment of a Guardian ad Litem, this court has stated as follows:

> [T]he Uniform Parentage Act provides only that the court "may appoint a guardian ad litem." It does not authorize the appointment of a GAL to continue past the determination of paternity.
>
> * * *
>
> We therefore hold that, absent special circumstances, once a determination of paternity has been made and permanent orders have been entered resolving custody, child support, and parenting time, the appointment of the GAL terminates. We preceive no reason why the child and parents should suffer the continued expense and the invasion of privacy occasioned by the indefinite appointment of a GAL.

In re the Interest of A.R.W., 903 P. 2d 10, 13 (Colo. Ct. App. 1994), cert. denied as moot (Colo. 1995).

Like the Uniform Parentage Act, Rule 53, C.R.C.P., allows a Trial Court in its discretion to appoint a special master. C.R.C.P. Rule 53(a) (1991). It does not provide for the appointment of a master to continue beyond the determination of the Permanent Orders. Once the master has fulfilled his mandate, the appointment automatically terminates with no further notice or motions required. In this case, neither Wife nor Husband should have had to bear the continued, unnecessary expense of a special master once the Permanent Orders were

resolved.

The instant case is similar to the cases involving the GALs in that no notice was apparently given regarding the termination of the Master's services through no fault of the parties. However, the Trial Court found that the lack of notice was not a concern when it made its February 22, 1995, ruling that the Master's fees were not chargeable from the time of the March, 1994 Order terminating his services. Since the Trial Court had already once found that a previously lost order was dispositive on the issue of the Master's fees, it is confusing as to why the Trial Court would refuse to review the new-found August, 1993, Order terminating the Master's services when it was presented on Wife's Rule 60 motion. Instead the Trial Court entered the Master's Verified Motion for Judgment with no comment.

It is an abuse of discretion for the Trial Court to favor the Master in this situation. Certainly the Master is entitled to be compensated fairly for his work. However, he is not entitled to fees where he is no longer under mandate to assist in the proceedings. The parties should not have to bear the cost of the judiciary's inefficiency. The Trial Court erred in allowing the Master to collect fees for work performed after his services were terminated, after the Master himself had admitted previously that he no longer had any official duties in the case after August 19, 1993.

B. THE MASTER'S FEES INCURRED IN REDUCING THE ORDER TO JUDGMENT AS WELL AS CERTAIN OF HIS FEES CHARGED THROUGHOUT THE PENDENCY OF THE CASE WERE EXCESSIVE AND/OR UNREASONABLE AND THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING THEM.

An attorney has a duty to charge a reasonable fee. Rule 1.5 of the Colorado Rules of Professional Conduct states that "[a] lawyer's fee shall be reasonable." Implicit in the Rule is that a lawyer should not double-bill. Nor should a lawyer charge for services which are inappropriate or illegal. "It is professional misconduct for a lawyer to . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [and] (d) engage in conduct that is prejudicial to the administration of justice . . ." Rule 8.4, Colorado Rules of Professional Conduct (1996 Cum. Supp.). Excessive and fraudulent billing practices are the essence of attorney misconduct and are sufficient to justify disbarment. See People v. Guyerson, 898 P. 2d 1062 (Colo. 1995)/ People v. Franks, 791 P. 2d 1 (Colo. 1990).

Throughout the duration of this case, Wife questioned many of the Master's billings. (Record at 785-88.) Those fees which were granted to the Master by the Trial Court's February, 1995, Order contained at least one

duplicitous charge, as well as a charge for a four hour hearing which in actuality only lasted two hours. (Record at 788-89, 795, 812.) Furthermore, the Master charged for improper ex parte telephone calls to Wife which were clearly outside the scope of his authority. (Record at 790.) Wife, in her Rule 60 Motion for reconsideration, asked the court to review the Master's bills, note the errors and disallow those fees. (Record at 793-821.) The Trial Court abused its discretion when it entered the judgment without reducing it for the improper fees.

The Master also has billed more than $3,000 in successfully reducing the February, 1995, fee order to judgment. The original amount of the Master's fees that Wife was ordered to pay was $586.19. (Record at 769-70.) The Judgment that the Trial Court entered amounts to $3,849.10. (Record at 849.) The Master makes these claims for legal fees and collection after he indicated to the Court on September 13, 1994 that he no longer had official duties regarding the case after August 19, 1993. Clearly, requesting fees of over $3,200 to collect a $600 judgment is excessive, unwarranted and violates the Rules of Professional Conduct. A trial court is authorized to take into account the time spent by the master on a matter and the complexity of the matter when reviewing a Master's fees. Carlson v. Carlson, 497 P. 2d 1006, 1008 (Colo 1972). Reducing an order to judgment certainly is not that complex that it requires $3,000 worth of the Master's time. The Trial Court abused its discretion when it

failed to review the Master's fees for reasonableness and allowed the Master to collect a clearly excessive amount for reducing a fee order to judgment.

C. APPELLANT'S DUE PROCESS RIGHTS WERE VIOLATED WHEN THE TRIAL COURT ALLOWED THE MASTER TO REDUCE HIS FEES TO JUDGMENT WHERE THE TRIAL COURT'S AND THE MASTER'S MISMANAGEMENT OF HER FILE RESULTED IN CONTINUED MASTER'S FEES AFTER HE HAD BEEN ORDERED TO TERMINATE HIS SERVICES, AND HAD SUBSEQUENTLY ADMITTED HE NO LONGER HAD OFFICIAL DUTIES IN THE CASE.

Both the United States and the Colorado Constitutions provide that the State shall not deprive a person of her property without due process of law. U.S. Const. Amend. XIV; Colo. Const. Art II, Sect. 25. Due process of law emphasizes fairness between the State and the individual dealing with the State, regardless of how other individuals in the same situation may be treated. Colorado State Claims Bd. v. DeFoor, 824 P. 2d 783, 799 (Colo. 1992), cert denied DeFoor v. Colorado, 506 U.S. 981. "The essence of procedural due process in fundamental fairness." Colorado State Bd. Of Nursing v. Lang, 842 P. 2d 1383, 1386 (Colo. Ct. App. 1992), cert. denied (Colo. 1993).

Furthermore, "the procedural protections required by the state and federal due process clauses cannot be fixed by formula; 'due process is flexible and calls for such procedural protections as the particular situation demands.' " People v. Kibel, 701 P. 2d 37, 43 (Colo. 1985) (quoting Morrissey v. Brewer, 408 U.S. 471 481 (1972).

In this case "fundamental fairness" demands at the very least an opportunity for Wife to be heard on the issue of the Master's fees, as well as a ruling by the Trial Court as to why it chose to ignore the August, 1993 Order terminating the Master's services. This is especially necessary in light of the fact that the Trial Court in its February, 1995, ruling found that the Master was not entitled to fees incurred after his services had been terminated via the Order of March, 1994.

Given the February, 1995, Trial Court ruling, one would assume that once the court became aware of the August, 1993, Order terminating Master's services that it would rule in the same way, thus providing the consistency that one expects from the judicial system. The Appeals Court has frowned upon the use of the trial Court's " 'inherent power' effectively to bypass the rules of civil procedure." Rubins v. Plummer, 813 P. 2d 778, 779 (Colo. Ct. App. 1990), cert. Denied (Colo. 1991). In this case the rules of civil procedure authorize the Trial Court to review its judgment and provide relief. C.R.C.P. Rule 60 (a) and (b)

(1990). Due process (procedural and substantive) demands that Wife and minor child be treated fairly and consistently. The use of the Trial Court's "inherent power" to ignore its own order and grant Master's fees incurred after his services were terminated is a blatant unfairness in an ongoing series of legal abuses and as such a denial of Wife's due process rights.

CONCLUSION

The Appellant respectfully requests that this Honorable Court reverse the Trial Court's Order for Judgment dated November 14, 1996 and remand the issue of the propriety of the Master's fees to the Trial Court for the grounds set forth above.

Respectfully submitted this 27th day of May, 1997.

"/s/ Marcy L. Rothenberg-Romer"

Marcy L. Rothenberg-Romer

Attorney for the appellant

1780 S. Bellaire St., #615

Denver, Colorado 80222

(303) 759-9111

CERTIFICATE OF MAILING

I hereby certify that on this 27th day of May, 1997, I deposited a true and correct copy of the foregoing **Respondent-Appellant's Opening Brief** in the United States Mail, proper postage prepaid, addressed as follows:

Lionel Menin, Esq.
134 W. 11th Avenue
Denver, CO 80204

Steven M. Zapiler, Esq.
250 Steele Street #303
Denver, CO 80206

Paul A. Frederiksen, Esq.
11479 S. Pine Drive
Parker, CO 80134

"/s/ Theresa Rawlings"
Theresa Rawlings

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO

Case No. 90 DR 2195 Div. 2

RESPONSE TO MASTER'S ARGUMENTS TO THE COURT

In re the Marriage of:

JOHN J. WRIGHT, Petitioner,

and

GWENDOLYN WRIGHT, Respondent.

COMES NOW, the Respondent, by and through her attorney, Marcy L. Rothenberg-Romer, and hereby submits her Response to Master's Arguments to the Court, and as grounds therefore, avers and alleges as follows:

1. Under Paragraph 1(b) the Master indicates that the Order of August 19, 1993 would have deprived him of all authority or power to act regarding the $31,821.08. As previously pointed out, the Court granted the Motion to Alter and Amend on July 30, 1993 which would have completely released all of these funds. The Master completely failed in his duty in gleaning this Order from the file. The Master was duty bound and ethically responsible to keep abreast and knowledgeable on all issues on all cases under his jurisdiction which he clearly did not do in this case. The Master's failure to keep abreast of all important decisions in this matter, clearly harmed the Respondent on more than one occasion, including requiring three hearings on a matter when an Order

had been entered which would have resolved the matter.

2. The Master's reference to "a new form of slavery" in his argument is clearly inappropriate, and a racially motivated remark based on the fact that both parties in this case are black.

3. The Master's argument that even if he had notice that the service had been terminated, he would have "ethically had to perform those services and been entitled to compensation" is erroneous and incorrect. Clearly, Judge Watanabe found that the Order which he was aware of, Judge Macrum's Order of March, 1994, terminated the Master's services completely, as well as any liability for any compensation. The same should apply in this case.

4. Under II, the Master was clearly aware of the date of the hearing and should review his own billing which indicates that the hearing time was billed for four hours. His claim "that two hour hearings often consume much more time than actual when travel to the Courthouse and delays caused by the Court's docket are included" is absolutely and completely erroneous. The hearing in this matter was held at the Master's own office on Dry Creek and Quebec, so there were no Court docket delays, nor was there any travel to the Courthouse.

5. The Master clearly failed in his quasi judicial duty to follow up and stay current in all issues under his jurisdiction as Master pursuant to Rule 53.

"/s/ Marcy Rothenberg-Romer"

Marcy Rothenberg-Romer #11506

Attorney for Respondent

1780 S. Bellaire St., #615

Denver, CO 80222

(303) 759-9111

(303) 759-9126 Fax

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of July, 1996, I deposited a true and correct copy of the **Response to Master's Arguments to the Court**, in the United States Mail, proper postage prepaid, addressed as follows:

Paul A. Frederiksen, Esq.
11479 S. Pine Drive
Parker, CO 80134

Lionel Menin, Esq.
134 W. 11th Avenue
Denver, CO 80204

"/s/ Theresa Rawlings

Theresa Rawlings

c:\mlrr\wright\argument.res

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO

Case No. 90 DR 2195 Division 9/R-1

MOTION TO TERMINATE MASTER'S SERVICES

IN RE THE MARRIAGE OF:

JOHN J. WRIGHT, Petitioner,

and

GWENDOLYN WRIGHT, Respondent.

COMES NOW, the Respondent, by and through her attorney, Marcy L. Rothenberg-Romer, and hereby files her Motion to Terminate Master's Services, and as grounds therefore, avers and alleges as follows:

1. That Paul Frederiksen was appointed as Master in this matter to determine the issues concerning the Permanent Orders.

2. That all issues concerning Permanent Orders have been resolved including the Respondent's request for withdrawal of the Appeal in this matter.

3. That the Master continues to charge the parties for services in this matter despite the fact that he is no longer acting as the Master in this matter.

4. That any and all further matters in this case should and will be addressed directly to the trial court and therefore there in no longer any need for a

Court Appointed Master.

WHEREFORE, the Respondent requests this Honorable Court enter its Order dismissing the Special Master in this matter and for such other and further relief as the Court deem just and proper in the premises.

"/s/ Marcy Rothenberg-Romer"

Marcy Rothenberg-Romer #11506

Attorney for Respondent

1780 S. Bellaire St., #615

Denver, CO 80222

(303) 759-9111

CERTIFICATE OF MAILING

I hereby certify that on this 25th of, February 1994, I deposited a true and correct copy of the foregoing **MOTION TO TERMINATE MASTER'S SERVICES** in the United States Mail, proper postage prepaid, addressed as follows:

Lionel Menin, Esq.
134 W. 11th Avenue
Denver, CO 80204

Paul A. Frederiksen
11479 S. Pine Dr.
Parker, CO 80134

Douglas Joffe, Esq.
1776 South Jackson, #418
Denver, CO 80210

"/s/ Theresa Rawlings"

Theresa Rawlings

This Motion having been reviewed by the Court, is hereby

✓ Granted Denied Ordered to be set by movant with notice Further_____

_____

3 - 23 -94 "/s/ J. Macrum"

Date James F. Macrum, District Judge

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO

Case No. 90 DR 2195 Division 9/R-1

MOTION TO TERMINATE MASTER'S SERVICES

In re the Marriage of:

JOHN J. WRIGHT

and

GWENDOLYN WRIGHT,

This motion having been reviewed by the court is hereby ✓ Granted Denied Ordered to be set by movant with notice Further_____

8/19/93 "/s/ Jack F. Smith"
Date Jack F. Smith District Judge

Petitioner,

Respondent.

COMES NOW, the Respondent, by and through her attorney, Marcy L. Rothenberg-Romer, and hereby files her Motion to Terminate Master's Services, and as grounds therefore, avers and alleges as follows:

1. That Paul Frederiksen was appointed as Master in this matter to determine the issues concerning the Permanent Orders.

2. That all issues concerning Permanent Orders have been resolved including the Respondent's request for withdrawal of the Appeal in this matter.

3. That the Master continues to charge the parties for services in this matter despite the fact that he is no longer acting as the Master in this matter.

4. That any and all further matters in this case should and will be addressed directly to the trial court and therefore there in no longer any need for a Court Appointed Master.

WHEREFORE, the Respondent requests this Honorable Court enter its Order dismissing the Special Master in this matter and for such other and further relief as the Court deem just and proper in the premises.

"/s/ Marcy Rothenberg-Romer"

Marcy Rothenberg-Romer #11506

Attorney for Respondent

1780 S. Bellaire St., #615

Denver, CO 80222

(303) 759-9111

CERTIFICATE OF MAILING

I hereby certify that on this 27th of, July 1993, I deposited a true and correct copy of the foregoing **MOTION TO TERMINATE MASTER'S SERVICES** in the United States Mail, proper postage prepaid, addressed as follows:

Lionel Menin, Esq.
134 W. 11th Avenue
Denver, CO 80204

Paul A. Frederiksen
11479 S. Pine Dr.
Parker, CO 80134

"/s/ Theresa Rawlings"
Theresa Rawlings

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO

Case No. 90 DR 2195 Division 9/R-1

MOTION TO ALTER AND/OR AMEND THE ORDER

In re the Marriage of:

JOHN J. WRIGHT

and

GWENDOLYN WRIGHT, Respondent.

This motion having been reviewed by the court is hereby ✓ Granted Denied Ordered to Petitioner, be set by movant with notice Further_____

7/30/93 "/s/ Jack F. Smith"

Date Jack F. Smith District Judge

COMES NOW, the Respondent, by and through her attorney, Marcy L. Rothenberg-Romer, Attorney-at-Law, and hereby files her Motion to Alter and/or Amend the Court Order of May 20, 1993, and as grounds therefore, avers and alleges as follows:

1. The counsel for Respondent, for the record, would like to note her objection to the Court having this hearing go forward without notice to her or her client despite the fact that the Court was informed that counsel for Respondent was out of town until May 26, 1993.

2. That the individual with whom counsel for Respondent shares office space, Alan B. Hendrix, appeared on behalf of the counsel for Respondent. Counsel for Respondent would like the Court to know that Mr. Hendrix had very little knowledge about this case, that counsel for Respondent and Mr. Hendrix are not partners, merely share office space together.

3. That counsel for Respondent would also, for the record, note that once again the Court proceeded without not only the Respondent being present, but counsel.

4. That it appears in the Court's Order, that it has ordered that a supersedeas bond be posted by the Respondent pursuant to C.R.C.P. Rule 62(a) and (d) and C.R.A.P. Rule 8(a). As the Court knows, all of those rules deal solely with stay of execution. It appears to counsel for Respondent that no stay of execution was granted in this matter and that the funds have been disbursed. Therefore, there in no need for a supersedeas bond.

5. That to release the Petitioner's funds and not order a stay and still hold the Respondent's funds, clearly is not within the parameters of either C.R.C.P. Rule 62(a) and (d) or C.R.A.P. Rule 8(a).

6. That the Respondent has filed a bond for costs on appeal for $250 as set forth in C.R.A.P. 7.

7. That to tie up the Respondent's funds when Petitioner received all of his is clearly prejudicial to her and not in accordance with the Rules cited by the Court.

8. That allowing the Respondent herein to file a Lis Pendens against the new property owned by the Petitioner does not give her any stay of execution on the matter at hand, and further, does not give her any recourse in the event this matter is reversed on appeal. Clearly, the Respondent has no

interest in any new property owned by the Petitioner.

WHEREFORE, the Respondent requests this Honorable Court enter its Order releasing the funds placed in the escrow account by the Master/Receiver in the sum of $31,821.08 immediately and for such other and further relief as the Court deems just and proper in the premises.

"/s/ Marcy Rothenberg-Romer"

Marcy Rothenberg-Romer #11506

Attorney for Respondent

1780 S. Bellaire St., #615

Denver, CO 80222

(303) 759-9111

CERTIFICATE OF MAILING

I hereby certify that on this 28th of, May, 1993, I deposited a true and correct copy of the foregoing **MOTION TO ALTER AND/OR AMEND THE ORDER,** in the United States Mail, proper postage prepaid, addressed as follows:

Lionel Menin, Esq.
134 W. 11th Avenue
Denver, CO 80204

Paul A. Frederiksen
11479 S. Pine Dr.
Parker, CO 80134

"/s/ Theresa Rawlings"
Theresa Rawlings

Marcy L. Rothenberg-Romer

Attorney at Law

1780 S. Bellaire St., #615

Denver, CO 80222

303 759-9111

303 759-9126 Fax

March 15, 1996

Paul Frederiksen, Esq.

11479 S. Pine Drive

Parker, CO 80134

RE: Marriage of Wright

Dear Mr. Frederiksen:

In once again reviewing your billing statements to Ms. Wright dated May 7, 1993 and May 12, 1993, it appears to me that the charge for May 7, 1993 and May 12, 1993 are duplicitous. The May 7, 1993 charge is estimated time for closing to obtain clerk's signature and the May 12, 1993 is the actual date that you appeared for the closing and obtained the clerk's signature on the deed. Clearly, one of these charges should be eliminated and I would suggest it be the May 7, 1993 charge.

It also appears that the charge for May 20, 1993 is duplicitous. Please explain specifically what the Court appearance by phone on May 20, 1993 was

for, particularly since I have no records that I was included in this Court appearance.

I would once again urge you to reconsider this action based on the new information regarding Judge Smith's Order terminating your services in mid-1993.

Sincerely,

"/s/ Marcy L. Rothenberg-Romer"

Marcy L. Rothenberg-Romer"

MLRR/trr

Enclosure

CC: Gwendolyn Wright

Marcy L. Rothenberg-Romer

Attorney at Law

1780 S. Bellaire St., #615

Denver, CO 80222

303 759-9111

303 759-9126 Fax

January 30, 1996

Paul Frederiksen, Esq.

11479 S. Pine Drive

Parker, CO 80134

RE: Marriage of Wright

Dear Mr. Frederiksen:

By now you have received a copy of Judge Smith's 1993 Order terminating your services far in advance originally thought by Judge Watanabe. Based on Judge Watanabe's prior ruling, I am certain that Judge Fasing will reconsider Judge Watanabe's Order and order that no fees are payable by either party subsequent to the date of Judge Smith's Order in 1993.

In reviewing your bill, it appears to me that not only would the parties not owe you any further funds, but you would probably owe them money as a refund.

It would make sense for all of the parties involved to come to some kind of stipulation regarding this issue without the necessity of incurring additional

attorney's fees and Court costs. Please contact me to discuss this matter.

Sincerely,

"/s/ Marcy L. Rothenberg-Romer"

Marcy L. Rothenberg-Romer"

MLRR/trr

CC: Gwendolyn Wright

Marcy L. Rothenberg-Romer

Attorney at Law

1780 S. Bellaire St., #615

Denver, CO 80222

303 759-9111

303 759-9126 Fax

March 27, 1995

Paul Frederiksen, Esq.

11479 S. Pine Drive

Parker, CO 80134

RE: Marriage of Wright

Dear Mr. Frederiksen:

Ms. Wright is attempting to reconcile your statements and has been unable to account for all the monies which you have allegedly charged.

Please provide an itemized billing statement from the date that you began as Master in this case until the Court cut off your fees.

Please provide these within five days.

Sincerely,

"/s/ Marcy L. Rothenberg-Romer"

Marcy L. Rothenberg-Romer"

MLRR/trr

CC: Gwendolyn Wright

Marcy L. Rothenberg-Romer

Attorney at Law

1780 S. Bellaire St., #615

Denver, CO 80222

303 759-9111

303 759-9126 Fax

March 8, 1995

VIA FAX

Paul Frederiksen, Esq.

11479 S. Pine Drive

Parker, CO 80134

RE: Marriage of Wright

Dear Mr. Frederiksen:

I understand that you spoke to my secretary in response to her inquiry concerning the bank statement on Ms. Wright's account.

The Court ordered you to provide Ms. Wright's money plus interest by March 1, 1995. Additionally, you have a fiduciary duty to provide all amounts, in full, that are currently existing in that bank account. Prior to writing the check, you should have called the bank or physically gone to the bank and determined the exact amount that was left in the account, written the check and closed the account. You did not do this.

Please contact the bank immediately, determine what amounts are still due and owing to Ms. Wright and forward it to me immediately. You are in

violation of the Court's Order, and I will not hesitate to take the necessary action against you to obtain the funds.

Sincerely,

"/s/ Marcy L. Rothenberg-Romer"

Marcy L. Rothenberg-Romer"

MLRR/trr

CC: Gwendolyn Wright

Marcy L. Rothenberg-Romer

Attorney at Law

1780 S. Bellaire St., #615

Denver, CO 80222

303 759-9111

303 759-9126 Fax

December 5, 1994

Paul Frederiksen, Esq.

11479 S. Pine Drive

Parker, CO 80134

RE: Marriage of Wright

Dear Mr. Frederiksen:

In reviewing the file in this matter, it appears that despite my previous request to you, I still have not received a copy of the sales contract on the Parker residence. Please forward one to me immediately.

Additionally, in reviewing your billing statements of May 20, 1993, July 19, 1993 and January 28, 1993 it appears that there has been some mistake. Your billing statements simply do not make sense. In January 1993, you show an outstanding balance of $1,940. Your next billing statement of May 20, 1993 shows a current billing including interest on overdue balance of $1,186.68. If you add those two figures together, it totals to $3,126.68. In addition, there shows a previous balance of $3,113.63. There is no bill in my possession

indicating that outstanding balance. Please provide me with copies of any additional bills which would evidence the previous balance of $3,113.63.

Sincerely,

"/s/ Marcy L. Rothenberg-Romer"

Marcy L. Rothenberg-Romer"

MLRR/trr

CC: Gwendolyn Wright

Marcy L. Rothenberg-Romer

Attorney at Law

1780 S. Bellaire St., #615

Denver, CO 80222

303 759-9111

303 759-9126 Fax

July 20, 1993

Paul Frederiksen, Esq.

11479 S. Pine Drive

Parker, CO 80134

RE: Marriage of Wright

Dear Mr. Frederiksen:

Some time ago I requested that you provide me with a detailed billing of your services in the Wright matter as well as copies of all closing statements, settlement documents, etc, on the property. As of this date, I have not received them.

As you are aware, you have a fiduciary duty as the Master and Receiver in this matter to provide this documentation to Ms. Wright. If you fail to do so within five (5) days of receipt of this letter, it will be necessary for me to file a motion with the Court to obtain this documentation.

Sincerely,

"/s/ Marcy L. Rothenberg-Romer"

Marcy L. Rothenberg-Romer"

MLRR/trr

CC: Gwendolyn Wright

Marcy L. Rothenberg-Romer

Attorney at Law

1780 S. Bellaire St., #615

Denver, CO 80222

303 759-9111

303 759-9126 Fax

June 22, 1993

Paul Frederiksen, Esq.

11479 S. Pine Drive

Parker, CO 80134

RE: Marriage of Wright

Dear Mr. Frederiksen:

It has come to my attention that Gwen Wright has still not received the settlement documents concerning the sale of the Parker residence. As you know, she is entitled to same as the previous co-owner of the property. I would request that you provide me with the documents immediately so that I can provide them to her.

Additionally, it appears to me that your final bill was approximately $900. more than the previous bill that had been submitted. I think that it is only fair that Ms. Wright receive an itemized statement defining the amounts charged by you. I would request that you provide me with same immediately.

Sincerely,

"/s/ Marcy L. Rothenberg-Romer"

Marcy L. Rothenberg-Romer"

MLRR/trr

CC: Gwendolyn Wright

COURT OF APPEALS, STATE OF COLO. PETITION FOR REHEARING

No. 96CA0372 Tr. Ct. No. 95CV526

Gwen Wright, Plaintiff-Appellant,

v.

Paul Frederiksen, Defendant-Appellee.

COMES NOW Ms. Wright, by and through her attorney of record and petitions this Court for a rehearing of the following points relative to its order in this case:

I. DUE PROCESS OF LAW

The Petitioner asserts that the Court of Appeals denied her due process of law by its ruling to exclude all reference to the exparte telephone call which was the basis of her injury. This exparte telephone call was never considered and therefore no fair hearing was granted to the Petitioner.

II. ABSOLUTE IMMUNITY

The Petitioner did not claim that the Appellee acted within the scope of his authority and that he should not have had absolute immunity for acts done within the scope of his authority. Rather, the Petitioner argued that the Appellee acted outside the scope of his authority which took him outside the pale of absolute immunity because this conduct was not protected.

APPENDIX K

responsibility of finding facts and rendering decisions which placed his function within the judicial process which does not conform with the limited order of reference.

VII. EXPARTE TELEPHONE

The Court refused to consider any of the exparte telephone call wherein the Appellee commits acts sufficient to injure Ms. Wright. The Court should have considered this evidence since it had been presented to the lower court rather than excluding it from its determination.

WHEREFORE the Petitioner requests that the Court rehear this matter based upon the aforesaid. When the imbalance of power supports the possibility of legal abuse, all evidence should be thoroughly reviewed.

Respectfully submitted on this 19th day of May, 1997.

"/s/ Dr. WAM Al-Haqq, Esq."

Dr. WAM Al-Haqq, Esq, #19900

710 East Twenty Fifth Avenue

Denver, Colorado 80205

(303) 832-1742

CERTIFICATION OF MAILING

A true and correct copy of this Petition was placed in the U.S. mail under first class postage prepaid addressed to Steven A. Zapiler 250 Steele St., #303, Denver, CO 80206, attorney of record for the Defendant, on this 19th day of May, 1997.

"/s/ Dr. WAM Al-Haqq, Esq."

Dr. WAM Al-Haqq, Esq.

TEXT - CONSTITUTIONAL AND STATUTORY PROVISIONS

C.R.S. 13-17-102(4), "the court **shall assess** attorney fees if, upon the motion of any party or the court itself, it finds that an attorney or party bought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado Rules of Civil Procedure or a designation by a defending party under section 13-21-111.5(3) that lacked substantial justification. As used in this article 'lacked substantial justification' means substantially **frivolous,** substantially **groundless,** or substantially vexatious."

United States Constitution, Amendment XIV, Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without **due process of law;** nor deny to any person within its jurisdiction the **equal protection of the law.**

Colorado Constitution, Section 25: **Due Process of Law.** No person shall be deprived of life, liberty or property, without **due process of law.**

Colorado Constitution, Section: **Equality of Justice.** Courts of justice shall be

open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay.

Procedural Due Process of Law requires: (1) That in addition to a fair and open hearing, there must be **due notice** and an opportunity to be heard, and the procedure must be consistent with the essentials of a fair trial, and the agency must **act upon evidence and not arbitrarily.** (2) The right of an owner of property **to fix the price** at which he will sell it is an inherent attribute of the property itself and is within the protection of the state and federal Constitutions. (3) **Necessity for notice** and hearing in matters involving property. The essence of procedural Due Process is fundamental fairness. This embodies adequate advance notice and an opportunity to be heard prior to state action resulting in deprivation of a significant property interest. It likewise entitles a litigant to timely notice of decisions which have adjudicated his property interests, in relation to available appellate remedies.